In the District Court of the United States for the District of Columbia

CIVIL ACTION NO. 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF, AND ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, INTERVENING PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

619114—44——1

JURISDICTIONAL STATEMENT BY THE DEFENDANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The defendants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

A. *Statutory Provisions*

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339,

sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. *Date of the Judgment or Decree Sought to be Reviewed and the Date upon which the Application for Appeal was Presented*

Te decree sought to be reviewed was entered on September 20, 1944. The petition for appeal was presented and allowed on the same day, and an assignment of errors filed.

C. *Nature of Cause and of Rulings Below*

This is an appeal from a final decree of the District Court of the United States for the District of Columbia, entered September 20, 1944, setting aside and permanently enjoining an order of the Interstate Commerce Commission of June 12, 1944, made in connection with a supplemental report of the same date issued upon rehearing and reconsideration in a proceeding known as No. 28991, *Passenger Fares Between District of Columbia and Nearby Virginia.*

The Commission proceeding was an investigation which, at the request of the Secretary of War, concurred in by the Secretary of the Navy, the Commission, by order of July 3, 1943, instituted into the reasonableness and the lawfulness

otherwise of the fares of the carriers involved[1] for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point and the Washington National Air Port, on the other hand. Following hearings held in Washington, D. C., on three days in August and four days in September, 1943, the Commission, on January 18, 1944, made and entered its original report and order by which it found the existing fares for the transportation involved to be unreasonable and prescribed the reasonable fares to be observed for the future. Thereafter, actions to set aside the order were instituted by the carriers involved and the State Corporation Commission of Virginia in the District Court of the United States for the District of Columbia. The actions were consolidated for hearing and were disposed of in one opinion and by one decree, which latter was entered on May 15, 1944. By the decree, the Commission's order of January 18, 1944, was enjoined and set aside, solely on the ground that

[1] The Capital Transit Co., the Alexandria, Barcroft and Washington Transit Co., the Arlington and Fairfax Motor Transportation Co., and the Washington, Virginia & Maryland Coach Co., hereinafter referred to as the Transit Company, the Alexandria Line, the Arlington Line and the Coach Company.

the Commission did not have jurisdiction over this transportation, the Court thus not being required to consider numerous other contentions made by plaintiffs, on the merits, as to the invalidity of the prescribed rates. The court's decision deals only with the provisions of the so-called "commercial zone exemption" contained in section 203 (b), (7a) and (8) of Part II of the Interstate Commerce Act, which provisions read in part as follows:

> Nothing in this part * * * shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs * * *; or (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft *nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act,* shall the provisions of this part * * * apply to; (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities * * * *provided that* the motor carrier engaged in such transportation of passenger over regular or irregular route or routes in interstate commerce *is also law-*

fully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; * * *. [Italics supplied.]

In its original report, the Commission, dealing first with subdivision (8) of the above and thereafter with subdivision (7a), had said and found (256 I. C. C. 769, 777) that:

> As to the Transit Company and the Coach Company there is no doubt that we have jurisdiction because one does not perform intrastate transportation in Virginia and the other does not perform it in the District. In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District it is reasonably clear that their fares between the Virginia installations and the District are subject to our jurisdiction. In any event, we are of the opinion and find that application of the act to that transportation is, in the language of section 203 (b) (7a), necessary to carry out the national transportation policy. We conclude that we have general jurisdiction over all of the fares under consideration.

The District Court, in enjoining the Commission's order of January 18, 1944, held that the Commission had not made the findings necessary to support its conclusion that application of the provisions of the Act was necessary to carry out the national transportation policy; and it also

held that, except as such application of the Act might be necessary to carry out the said policy, the transportation involved was exempted by subdivision (8), the Court holding in this connection that the Transit Company and other carriers were "also lawfully engaged in the intrastate transportation of passengers over the entire length of" their interstate routes.

Responding to the Court's holding of inadequacy of findings in its report to support its conclusion that application of the Act to the transportation was necessary to carry out the national transportation policy, the Commission reopened its proceeding for further consideration and hearing. And, since the question as to the applicability of the exemption provision was closely related, the reopening was made to include that question. The further hearing was limited to the matters passed upon by the Court but the reconsideration provided for was unrestricted.

At the further hearing, counsel for the Transit Company and other carriers appeared specially and filed motions to discontinue the proceeding on the ground that the matters placed in issue were *res judicata* by reason of the District Court's holdings above referred to, including its holding of inadequacy of findings by the Commission to support its taking of jurisdiction as necessary to carry out the national transportation policy. As to the latter holding, the position of counsel for the carriers was that, since that holding was legal,

the Commission was foreclosed from reopening its proceeding and the only proper course was to take an appeal to the Supreme Court. The presiding Commissioner overruled the motions only so far as necessary to enable the hearing to proceed, and they were subsequently passed upon and overruled by the Commission upon grounds fully stated in its supplemental report.

At the further hearings, the carriers and the Virginia Commission offered no evidence but their counsel cross examined witnesses appearing in behalf of the Departments and the Commission's Bureau of Inquiry. In its supplemental report, issued June 12, 1944, the Commission dealt specifically with the matters involved in the Court's opinion and which were in issue for the taking of further evidence. It discussed at length and made subordinate findings in support of its conclusion that its taking of jurisdiction over the transportation involved was necessary to carry out the national transportation policy. In addition, it discussed at length the facts showing the extent to which the carriers were engaged in the intrastate transportation of passengers over their interstate routes and concluded that none of them was so engaged "over the entire length" of its interstate route, or routes, in question, and, accordingly, that the transportation involved was not excepted from the Act by the exemption provisions of section 203 (b) (8). It also concluded

that the prescribed fares were not commutation fares, and that in any event it had power to compel their adoption, thus rejecting the contentions to the contrary urged by the carriers in the District Court but not passed upon by the court. In all other respects the Commission affirmed the findings and conclusions adopted in its prior report. Pursuant to the said findings and conclusions, as reconsidered and reaffirmed, the Commission, by its order of June 12, 1944, which accompanied its supplemental report, prescribed for the transportation involved fares the same in level and other respects as those prescribed by its prior order of January 18, 1944.

Thereafter, the carriers and the Virginia Commission filed with the District Court a motion which asked with respect to the Court's decree of May 15, 1944, enjoining the Commission's prior order of January 18, 1944, that the said decree of injunction be amended and made more specific and clear "so as to include by direct reference the supplemental order of the Commission of June 12, 1944, or that [in the alternative] the Court enter a supplemental order to the same effect." Such relief was sought primarily on the ground that the supplemental order was in violation of the decree, because the Commission in its supplemental report had made "no new, additional or different findings from the findings of January 18, 1944, which this Court heretofore found fatally

insufficient." The further proceeding before the Commission was characterized in the motion as "a flagrant disregard of the order of this Court, a failure and refusal to follow the statutory provisions for appeal and * * * a frivolous proceeding to circumvent the injunction issued by the Court." As an additional ground for such relief, the motion set up general allegations of unlawfulness, namely, that the order was "unreasonable, arbitrary and contrary to the evidence and in excess of the statutory authority of the Commission."

Following the filing of the motion by the carrier and the Virginia Commission, the United States filed with the Court a motion for new trial and new judgment dismissing the complaints, the motion being made under Rule 59 (a) and (b) of the Federal Rules of Civil Procedure and being based on the ground that the Commission's supplemental report and findings on a new or reconsidered record constitute newly discovered material evidence of a kind within the provisions of the Rule. The Commission filed answer to the motion of the carriers and the Virginia Commission in which it denied that either its order of June 12, 1944, or its reopening of the proceeding was violative of the Court's decision or decree, but that, on the contrary, the action taken by it was responsive thereto; that, since it considered that the Court was right in holding that it had not made

adequate findings to support its conclusion that its taking of jurisdiction was necessary to carry out the national transportation policy, it would not have been justified in appealing therefrom; and that the course which it followed of immediately reopening the case did not constitute a failure to follow the statutory proceeding but, on the contrary, was squarely in line with its special purpose of expediting the Court review of action of the Commission and also with the duty of the Government and Commission not to burden the Supreme Court with unnecessary appeals; that, as for the question of the applicability of the exemption provision of section 203 (b) (8) of the Act, while doubtless that question was legal, it was one of basic jurisdiction depending largely on fact, and that, where in such case, and, as here, it was of the view that the record of facts, or its report, was in need of amplification or clarification, it believed that it was expected to take corrective action and not to appeal in such condition of the record; that any other rule (whether of *res judicata* or other doctrine designed especially to fit private litigation) would be contrary to the public interest and generally in conflict with the objectives of the special procedure for review of Commission action; that, even assuming that it was wrong in this, which it did not believe to be the case (Cf. *Baltimore & O. R. Co.* v. *United States,* 24 F. Supp. 734, 735; *United States* v. *Griffin,* 303 U. S. 226,

228), its reopening of the proceeding directly responsive to the Court's holding of inadequacy of findings to support its taking of jurisdiction under the national transportation policy, was action, which upon the curing of the defect, would clothe it with jurisdiction; and that, since, contrary to the allegations in the motion, it had made full and adequate findings curing such defect, it had thereby become clothed with the jurisdiction which thereupon exercised.

Further answering the motion of the carriers, the Commission alleged that, except as the motion might be taken to constitute a bill of complaint seeking the setting aside of the order of June 12, 1944, it was wholly without substance, the relief prayed outside the Court's authority and the motion generally dilatory; and, moreover, that the motion's general allegations that the said order was invalid because of inadequate findings and because unreasonable, contrary to the evidence and in excess of its authority did, in fact, constitute the pleading a bill of complaint.

The United States, in addition to filing its motion, above referred to, filed a statement in answer to the motion of the carriers and the Virginia Commission, in which the position taken by it was generally the same as that of the Commission and in which it stressed the fact that the reopening of the proceeding by the Commission to supply the findings which the Court found lacking

in its previous report was responsive to the Court's opinion and that the Commission's action in this respect was its consistent practice and entirely in harmony with court decisions.

Following hearing on the carriers' motion and that of the United States, the District Court, on August 25, 1944, rendered its decision denying the motion of the United States and holding that the Commission's order of June 12, 1944, should be enjoined and set aside; and on September 20, 1944, it entered its decree setting aside and permanently enjoining the said order. The Court, in referring in its opinion to the reopening by the Commission of its proceedng and the fact that the Commission's order prescribed the same fares as those prescribed by its earlier order, said:

> Without applying to this court for a modification of the order of this court of May 15, 1944, the Commission proceeded to reopen its hearings, to take further testimony, to make additional findings, and to enter a new order on June 12, 1944, which was, in effect, the same order that had been permanently enjoined by this court. Although it is rather difficult to understand the conduct of the Commission in undertaking to put into effect an order this court had enjoined, we have nevertheless taken into consideration the new report of the Commission and the evidence upon which it is based.

The grounds upon which the Court based its decision were, similarly as in the case of its prior opinion, that the transportation involved was exempted by section 203 (b) (8) of the Act and that the Commission had not made the findings necessary to support its conclusion that the application of the Act was necessary to carry out the national transportation policy. Speaking of the question of whether the transportation was exempted, the Court said:

> As to the first question whether the carriers are in intrastate commerce over the entire length of their lines, practically no additional evidence was introduced before the Commission. This court has already found that the Commission was in error in its conclusion of law upon the facts and it is unnecessary to discuss this question any further.

Concerning the question of the adequacy of the Commission's findings to support its taking of jurisdiction as necessary to carry out the national transportation policy, the Court stated that the Commission based its conclusion chiefly on the finding that the employees of the Pentagon were dissatisfied with the fares charged by the carriers and the importance of the war work carried on at the Pentagon. As to the first ground, the Court said that "apart from the fact that the dissatisfaction of the employees with the fares charged is ground for finding that their reduction is neces-

sary to carry out the national transportation policy, there is a mere scintilla of evidence to support this finding." (sic.) Following this statement, the Court discusses certain of the evidence and apparently concludes that it is not substantial. With respect to the second ground, the Court said:

> As to the importance of the Pentagon in the prosecution of the War, Congress has not provided that the Commission could take jurisdiction merely because of the importance of transportation to or from a government agency. There must be more than this; it must appear that the war work of the government is materially affected and not merely that a small portion of the workers are dissatisfied with the rates of fare charged by the carriers.

The Court's concluding holding reads:

> We hold that the facts found by the Commission do not support its conclusion that its taking jurisdiction is necessary to the national transportation system.

Circuit Judge Arnold issued an opinion dissenting from the conclusions of the majority, which not only sustained the defendants on the jurisdictional issues, but also completely upheld the Commission's action on the merits

Thereafter, on September 20, 1944 the Court issued findings of fact and conclusions of law, implementing its written decision, as well as the final decree, here sought to be reviewed, enjoining

the Commission's order. Copies of the Court's opinion of May 15, 1944, the majority and dissenting opinions of August 25, 1944, and the findings of fact, conclusions of law and final decree of September 20, 1944 are hereto attached.

The questions presented by this appeal are substantial, and defendants believe, as Justice Arnold also did, that the majority of the Court is clearly wrong. As appears from the foregoing, the Commission has concluded that the municipal zone exemption of Section 203 (b) (8) does not deprive it of jurisdiction over this transportation for two reasons: (1) because it has found that these carriers are not engaged in intrastate transportation over the entire length of their interstate lines and that the exemption is therefore by its terms not applicable; and (2) because it has found, as it is authorized to do under the Act, that, even if the exemption were otherwise applicable, its removal with respect to the present transportation was necessary to carry out the national transportation policy. The District Court must be reversed if it was in error in rejecting either of these ultimate findings. Defendants believe that the Court in setting aside these findings has exceeded its power by weighing the evidence and substituting its judgment for that of the Commission on technical factual questions, the determination of which Congress has specifically entrusted to the Commission. Not only is the first finding of the Com-

mission supported by substantial evidence, but by preponderant evidence. The court's contrary finding that these carriers were engaged in intrastate transportation over the entire length of their interstate lines, is clearly based upon assumptions which are plainly wrong in the light of the uncontradicted testimony of record.[1]

It is apparent too that there was a rational basis in the Commission's subordinate findings in its supplemental report for the second ultimate finding above. Thus, the Commission found that

[1] This is particularly evident with respect to the Capital Transit Company, which indeed never alleged before the Court that it conducted any intrastate operations in Virginia. In its first operation the Court remarked: "The fact that the Capital Transit Company does not pick up and discharge passengers at many stops in Virginia does not prevent its transportation in Virginia from being intrastate." In fact, however, it is obvious from the record that this company actually makes no stops in Virginia except at the Pentagon, as is indicated by the following statement in the Commission's supplemental report:

"At the original hearing the president and general manager of the Transit Company testified that the company was not engaged in any intrastate operations in Virginia over any of its interstate routes in the area here considered. In other of his testimony he said, among other things, that, so far as he knew, there was no pick-up or discharge of passengers by the company's Pentagon bus lines outside the District of Columbia other than at the Pentagon Building; that the company had no authority to use the lines for short haul of passengers in Virginia; and that it was its intention to operate between certain points in the District to the Pentagon, conducting 'a through express type of service to serve the War Department Building.'"

these military and naval installations constituted the "nerve center of the war effort in this country"; that the existing fares between these buildings and the District of Columbia were a source of dissatisfaction among the employees, who were in relatively low income groups, and an element influencing some of them to leave the Government service; and that no state agency was empowered to regulate these interstate rates. The national transportation policy directs the Commission, among other things, "to promote economical service * * * all to the end of developing coordination and preserving a national transportation system by water, highway and rail * * * adequate to meet the needs of the * * * national defense," and directs, further, that "all of the provisions of this Act shall be administered and enforced with a view to carrying out the above policy." In the light of the Commission's subordinate findings it seems obvious that the Commission might well find that application of the provisions of the Act to this transportation was "necessary" to carry out the Congressional policy. The refusal of the majority of the Court to accept the Commission's conclusion in this respect, as Justice Arnold in his dissent points out, is due to a peculiar interpretation of the word "necessary" as used in Section 203 (b) (7a) authorizing the Commission to remove the exemption when it finds that application of the Act is "neces-

sary" to carry out the national transportation policy. The majority hold, as he says, that as a matter of law no necessity for federal regulation of military transportation can exist until it is evident "that the war work of the Government is materially affected." Defendants believe that there is complete justification for Justice Arnold's conclusion in this connection, that "nothing in the Act supports a construction so contradictory to common sense."

The disposition of the case by the District Court on the above narrow ground leaves undecided numerous other important issues. Particularly important is the question of the Commission's jurisdiction over transportation which is in part by motor carrier and in part by street electric railway, where the two kinds of transportation are for purposes of practical administration, inseparable. If the District Court's decision is reversed, defendants believe, in view of the pressing need for a speedy determination of this whole war-related case, that this Court may properly also consider these other issues on the present appeal.

D. *Cases Sustaining the Supreme Court's Jurisdiction on Appeal*

United States v. *Carolina Freight Carriers Corp.*, 315 U. S. 475.

Alton Railroad Co. v. *United States*, 315 U. S. 15.

Noble v. *United States*, 319 U. S. 88.
Crescent Express Lines v. *United States*, 320 U. S. 401.
Board of Trade of Kansas City v. *United States*, 314 U. S. 534.
Union Stock Yard Co. v. *United States*, 308 U. S. 213.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated September 23, 1944.

CHARLES FAHY,
Charles Fahy,
Solicitor General.

WENDELL BERGE,
Per R. L. P.,
Wendell Berge,
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EXHIBIT A

In the District Court of the United States for the District of Columbia

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CIVIL ACTION 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

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UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before MILLER, Associate Justice, United States Court of Appeals, District of Columbia, and BAILEY and LETTS, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court

BAILEY, *J.*:

Each of the above-named plaintiffs has brought an action to set aside an order of the Interstate Commerce Commission of January 18, 1944, as extended by an order of February 14, 1944. These actions have been consolidated for trial.

The orders of the Commission were made pursuant to an investigation instituted at the request or complaint of the Secretary of War, concurred in by the Secretary of the Navy, into the reasonableness and lawfulness of fares for the transportation of passengers between all points in the District of Columbia on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, on the other hand.

The Pentagon is located adjacent to U. S. Route No. 1, nearly two miles south of the Virginia end of the Memorial Bridge across the Potomac River, and about 1.5 miles west of the Virginia end of the 14th Street Highway Bridge. The Navy Annex is about two miles south of the Virginia end of the Memorial Bridge, and about one mile west of the Pentagon Building. It is reached from the Memorial Bridge over Arlington Ridge Road, which does not run by the Pentagon.

The Army Annex is on the Mt. Vernon Memorial Highway, about 1.75 miles south of the Virginia end of the Highway Bridge, and the Airport is approximately 0.7 mile beyond.

The Transit Company furnishes regular urban and suburban streetcar and bus service for the transportation of passengers in the District and nearby Maryland, and bus service between the District and the Pentagon. The Virginia Lines transport passengers by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the downtown business section of the District, on the one hand, and points in Virginia, on the other hand. All four serve the Pentagon. The Navy Annex is served by the Alexandria Line and the Arlington Line. The Army Annex and the Airport are served only by the Alexandria line. All of the plaintiffs operate lines over both the Memorial Bridge and the Highway Bridge. The routes over which plaintiffs operate in the District were prescribed by the Public Utilities Commission of the District of Columbia.

After hearings the Commission undertook to fix fares between all points of the District of Columbia, on the one hand, including those served by the electric street railways of the Capital Traction Company, and the Pentagon, the Navy Annex, the Army Annex, and the Airport, on the other hand, including joint fares between the Capital Traction Company and the Virginia Companies. Each of the plaintiffs claims that the Commission was without jurisdiction to make the order complained of.

The Interstate Commerce Commission Act, Section 203 (6), (7a), and (8) (49 U. S. C. 303 (6), (7a), and (8)) excepts from the jurisdiction of the Commission certain municipal zones. This section provides:

> (7a) * * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; * * *

All the operations in question are performed within the territorial limits of the District of Columbia municipal zone prescribed by the Inter-

state Commerce Commission, Washington District of Columbia Commercial Zone, 3 M. C. C. 243. The first question that arises is the meaning of the phrase "lawfully engaged in the infrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction." The Commission contends that the Capital Traction Company is not engaged in intrastate transportation in Virginia and that the Virginia companies are engaged in only limited intrastate transportation in the District of Columbia. But the transportation from the Virginia line to the Pentagon is intrastate, and is subject to regulation by the State Corporation Commission of Virginia, and the Virginia companies not only do local business in Virginia but, while their intrastate business in the District of Columbia may be said to be limited, their transportation in the District of Columbia is regulated by the Utilities Commission of the District of Columbia. The fact that the Capital Traction Company does not pick up and discharge passengers at many stops in Virginia does not prevent its transportation in Virginia from being intrastate. As stated by the Commission:

> This is urban, mass transportation between points in the District and points in Virginia just beyond the District line, and is the same in all characteristics as transportation between residential areas of the District and commercial and Government establishments in the District.

The transportation involved here is not interurban but, as the Commisison says, urban trans-

portation and, as such, it was not, in our opinion, the intention of Congress to confer jurisdiction on the Commission to regulate fares for transportation of this nature.

Section 216 (e) of the Motor Carrier Act contains this proviso:

> *Provided, however,* That nothing in this part (the Motor Carrier Act is Part II of the Interstate Commerce Act) shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

The effect of the Commission's ruling is to regulate fares for intrastate transportation for it provides for a fare over a large intrastate system of transportation under the guise of regulating fares for what is substantially urban transportation between the District of Columbia and points in nearby Virginia.

The Commission says:

> All that the Commission's order does here is to extend the District of Columbia rate base and the District of Columbia fares of the Capital Transit Company both cash and token to cover this Virginia transportation.

Indeed, the order of the Commission makes clear that its basic theory is that these Virginia installations should be treated, for transportation purposes, as part of the District.

As we are of the opinion, as above stated, that the Commission has misconstrued the statutes in holding that the various plaintiffs are not "also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction," it is not necessary to decide whether the Commission has jurisdiction over fares over the electric street railway lines of the Capital Traction Company, which constitute about half the entire mileage operated by the street cars and busses of the Capital Traction Company in the District of Columbia.

The Commission, however, after taking the view that it had jurisdiction by virtue of its construction of the Act of Congress set out, added:

> In any event, we are of the opinion and find application of the Act to that transportation is, in the language of section 203 (6) (7a) necessary to carry out the national transportation policy.

The National Transportation Policy, as defined in the section of the Act quoted, is as follows:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue

> preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. * * *.

The Commission does not say, however, in what respect its order complies with the National Transportation Policy, nor does it make any findings to support its general conclusion that its order "is necessary" to carry out the National Transportation Policy.

In *City of Yonkers* v. *United States*, 320 U. S. 685, 689–692:

> The Commission itself has noted that in the "construction of these exclusion clauses great difficulty has been experienced, particularly in determining the roads properly classifiable as interurban electric railways." Annual Report (1928), p. 80. That difficulty is apparent here by the division of opinion which exists in the Court whether this Yonkers branch is an "interurban electric" railway which is "operated as a part" of the New York Central system. § 1 (22). As stated by Mr. Justice Brandeis in *United States* v. *Idaho*, 298 U. S. 105, 109, determination of what is included within the exemption of § 1 (22) involves a "mixed question of fact and law." Congress has not left that question exclusively to admin-

istrative determination; it has given the courts the final say. *Id.*, p. 109. It is settled that the aid of the Commission need not be sought before the jurisdiction of a court is invoked to enjoin violations of the provisions in question. *Texas & Pacific Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.*, 270 U. S. 266. And the fact that the Commission fails to make a finding on this jurisdictional question obviously does not preclude the reviewing court from making that determination initially. But we deem it essential in cases involving a review of orders of the Commission for the courts to decline to make that determination without the basic jurisdictional findings first having been made by the Commission.

* * * In the application of the doctrine of the *Shreveport* case, this Court has required the Commission to show meticulous respect for the interests of the States. It has insisted on a "suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear." *Florida* v. *United States*, 282 U. S. 194, 211–212. In that case this Court set aside an intrastate rate order of the Commission because of the "lack of the basic or essential findings required to support the Commission's order." *Id.*, p. 215. The principle of the *Florida* case is applicable here. The question is not merely one of elaborating the grounds of decision and bringing into focus what is vague and obscure. See *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499. Cf. *Securities & Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80. Here as in

the *Florida* case the problem is whether the courts should supply the requisite jurisdictional findings which the Commission did not make and to which it even failed to make any reference.

* * * The Congress has entrusted to the Commission the initial responsibility for determining through application of the statutory standards the appropriate line between the federal and state domains. Proper regard for the rightful concern of local interests in the management of local transportation facilities makes desirable the requirement that federal power be exercised only where the statutory authority affirmatively appears. The sacrifice of these legitimate local interests may be as readily achieved through the Commission's oversight or neglect (*Illinois Commerce Commission* v. *Thomson*, 318 U. S. 675) as by improper findings. The insistence that the Commission make these jurisdictional findings before it undertakes to act not only gives added assurance that the local interests for which Congress expressed its solicitude will be safeguarded. It also gives to the reviewing courts the assistance of an expert judgment on a knotty phase of a technical subject.

We are asked to presume that the Commission, knowing the limit of its authority, considered this jurisdictional question and decided to act because of its conviction that this branch line was not exempt by reason of § 1 (22). But that is to deal to cavalierly with the Congressional mandate and with the local interests which are pressing for recognition. Where a federal agency is authorized to invoke an overriding federal power except in certain prescribed situa-

tions and then to leave the problem to traditional state control, the existence of federal authority to act should appear affirmatively and not rest on inference alone.

This is not to insist on formalities and to burden the administrative process with ritualistic requirements. It entails a matter of great substance. It requires the Commission to heed the mandates of the Act and to make the expert determinations which are conditions precedent to its authority to act.

We intimate no opinion on the merits of the controversy. For in absence of the requisite jurisdictional findings we think the order of the Commission should have been set aside.

Inasmuch, then, as we are of the opinion that the Commission had no jurisdiction, unless it be necessary to carry out the national transportation policy, and, as the Commission has made no findings to support that conclusion, the order of the Commission should be set aside.

It is unnecessary to pass upon other questions raised in the pleadings.

An order will be entered directing the defendant Interstate Commerce Commission to set aside the order of July 3, 1943, and perpetually enjoining its enforcement.

(S) JUSTIN MILLER.
(S) JENNINGS BAILEY.
(S) F. DICKINSON LETTS.

EXHIBIT B

In the District Court of the United States for the District of Columbia

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CIVIL ACTION 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before ARNOLD, Associate Justice, United States Court of Appeals, District of Columbia; and BAILEY and LETTS, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court

BAILEY, *J.*:

These causes have been heard on the motion of the various carriers to amend the order of this court entered on May 15, 1944, enjoining the enforcement of the order of the Interstate Commerce Commission of January 18, 1944 so as to provide for the issuance of an order enjoining the enforcement of a subsequent order of the Interstate Commerce Commission of June 12, 1944; and also a motion of the United States for a retrial of these causes and a modification of the order of this court of May 15, 1944.

At the hearing of the foregoing motion it was stipulated by all parties in open court that Justice Thurman W. Arnold of the United States Court of Appeals of the District of Columbia might sit in lieu of Justice Justin Miller who was absent from the District.

In its opinion and findings of fact of this court filed on May 1, 1944, the court held in substance that the Interstate Commerce Commission was without jurisdiction to make its order of January 18, for the reason that the carriers were engaged in intrastate commerce throughout the entire length of their lines and that the Interstate Commerce Commission had not made findings of fact sufficient to justify its conclusion that it had jurisdiction because its action was necessary to carry out the national transportation policy.

Without applying to this court for a modification of the order of this court of May 15, 1944, the Commission proceeded to reopen its hearings, to take further testimony, to make additional findings, and to enter a new order on June 12, 1944, which was, in effect, the same order that had been permanently enjoined by this court. Although it is rather difficult to understand the conduct of the Commission in undertaking to put into effect an order this court had enjoined, we have nevertheless taken into consideration the new report of the Commission and the evidence upon which it is based.

As to the first question whether the carriers are in intrastate commerce over the entire length of their lines, practically no additional evidence was introduced before the Commission. This court has already found that the Commission was in error in its conclusion of law upon the facts and it is unnecessary to discuss this question any further.

As to the new evidence and findings of fact upon which the Commission undertakes to conclude that it has jurisdiction because it "is necessary to carry out the national transportation policy," the Commission bases its conclusion chiefly on the finding that the employees of the Pentagon are dissatisfied with the fares charged by the carriers and the importance of the war work carried on at the Pentagon. As to the first ground, apart from the fact that the dissatisfaction of the employees with the fares charged by the carriers is ground for finding that their reduction is necessary to carry out the national transportation policy, there is a mere scintilla of

evidence to support this finding. The Commission's findings were that many of the passengers to the Pentagon are low-salaried employees of the Government and that a representative group of them were dissatisfied with the fares. As to the latter finding, it clearly appears that the proportion of turnover of employees at the Pentagon did not exceed the average in government departments, and in only a very few instances did employees give the rate of fares as the cause of their dissatisfaction.

It must be observed that there has been no raising of fares by the carriers whereby the national transportation policy has been affected.

As to the importance of the Pentagon in the prosecution of the War, Congress has not provided that the Commission could take jurisdiction merely because of the importance of transportation to or from a government agency. There must be more than this; it must appear that the war work of the government is materially affected and not merely that a small portion of the workers are dissatisfied with the rates of fare charged by the carriers.

We hold that the facts found by the Commission do not support its conclusion that its taking jurisdiction is necessary to the national transportation system.

The motion of the United States for a new trial should be overruled and the order of the Commission of June 12, 1944 be set aside and its enforcement permanently enjoined.

(Sgnd.) JENNINGS BAILEY.
(Sgnd.) F. DICKINSON LETTS.

ARNOLD, *J.*, dissenting:

This case arose out of a complaint by the Secretaries of War and the Navy concerning the fares charged by the Capital Transit Company and other companies engaged in carrying employees across the District Line to the Pentagon Building and other military installations in Virginia. After the complaint was received the Interstate Commerce Commission instituted its own investigation and held hearings. It finally ordered that the Capital Transit Company carry passengers to the Pentagon Building for a cash fare of 10¢ or a fare of 8⅓¢ if commutation tickets were purchased, and that a joint fare between the companies involved in this case be fixed at $1.60 for twelve one-way trips, including transfer privileges.

By a former decision of a three-judge court in these proceedings this order of the Commission was set aside. That court held (1) that the Commission had no jurisdiction to fix the rates or to establish joint fares because the operations were wholly within the commercial zone designated by the Interstate Commerce Commission and there was intrastate transportation over the entire interstate lines;[1] and (2) that the Commission had made no findings to support its conclusion that its jurisdiction was necessary in the interests of the national transportation policy. After this decision the Commission held further hearings and made supplemental findings to the effect that the exercise of the Commission's jurisdiction was necessary in the national defense. It then issued a second order putting into effect the rates pre-

[1] See 49 U. S. C. A. 303 (b) (7a) (8).

viously enjoined in this court. It is that second order which plaintiffs seek to enjoin in this case.

The opinion of the majority that the Commission has no jurisdiction to issue an order regulating the transportation in this case seems to me clearly in error. The statute plainly gives the Commission jurisdiction over the transportation of passengers in interstate or foreign commerce within a municipality or between contiguous municipalities or zones commercially a part of a municipality to the extent that the Commission shall find it necessary to carry out the national transportation policy declared in the Act. This explicitly covers transportation between the District of Columbia and the Pentagon Building in Virginia.

This national transportation policy which the Commission finds it necessary to carry out is defined by an amendment to the Interstate Commerce Act in 1940.[2] In so far as the policy relates to national defense the declared intention of Congress is to provide for a fair and impartial regulation of all modes of transportation "to promote safe, adequate, economical, and efficient service * * * to encourage the establishment and maintenance of reasonable charges * * * all to the end of developing, coordinating, and preserving a national transportation system * * * to meet the needs * * * of the national defense." The Commission has found in unequivocal terms that the regulation of fares from the District of Columbia to the general headquarters of the Army in the Pentagon Building in Virginia

[2] 54 Stat. 899 (1940), 49 U. S. C. A. preceding Sec. 301.

is necessary in the national defense. Unless these findings are arbitrary and unreasonable the jurisdiction of the Commission in this case is beyond question.

Even in the absence of evidence, judicial notice of the intimate connection of the work done at the Pentagon Building and the other installations with the operation of our armies in the field would seem sufficient support for the findings relating to the Commission's jurisdiction over the transportation of the thousands of employees who are part of our national military headquarters. But, in addition, we have the testimony of responsible Army and Navy executives, backed up by the opinions of the Secretaries of War and the Navy, that the Commission's regulation is necessary to the national defense. It is true that, for the most part, this testimony is opinion evidence. But, the factors which contribute morale and efficiency in the armed services can only be based upon opinion since they relate to the future operations. They can never be statistically proved. For a three-judge court, without experience in or responsibility for military organization, to impose its own ideas of whether federal regulation of military transportation is necessary in the national defense against the judgment of the men who are responsible for the morale and discipline of our armies is unwarranted in time of peace and reckless in time of war.

The informed opinion of such men is all we have to guide us in military matters. The testimony of those responsible for our military organization is unanimous that military efficiency requires unified federal regulation of the trans-

portation of military personnel from the District of Columbia to general headquarters across the state line rather than the uncoordinated control by independent local commissions, none of which have jurisdiction over the entire route. Certainly this judgment seems reasonable on its face. Nothing in the record gives this court the slightest justification for disregarding it.

The reasoning on which the majority base their refusal to follow the testimony of military experts that the Commission's regulation was necessary in this case is based upon a peculiar interpretation of the word "necessary" as it is used in Section 303 (b). That section directs the Commission to apply the Act to interstate transportation within a municipal area "to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy". The majority hold that as a matter of law no necessity for federal regulation of military transportation can exist until it is evident "that the war work of the government is materially affected". In other words, it is never permissible for the Commission to regulate in order to plan for more efficient military transportation or to avoid future impairment of the military operation. An uncoordinated system of regulation which in the opinion of military experts is dangerous to national defense must be permitted to continue until there is an actual breakdown in military transportation. The majority infer that such a breakdown must be serious because they lay stress on evidence that the present turnover of the employees of the Pentagon Building is no greater than the average

in government departments and that dissatisfaction has not yet become general. It thus appears that average performance is all that our military command is entitled to strive for in time of war and that the necessity of regulation to promote the maintenance of reasonable rates, as described in the Act, cannot exist until military employees become so dissatisfied that in a time of crisis they begin to desert their posts in substantial numbers. In other words, before the Commission can attempt to perform its duty to promote reasonable rates in the interests of national defense the existing rates must be higher than the traffic will bear.

Nothing in the Act supports a construction so contradictory to common sense. The language in the Act that the Commission may regulate whenever it is necessary to encourage the establishment and maintenance of reasonable rates does not mean that it must withhold its hand until real harm has been done to the war effort. It is probably true that no measurable harm to the war effort will be occasioned by any rate, however excessive. It is the duty of the general staff to carry on in spite of every difficulty and it is to be hoped that the personnel attached to military headquarters will be at their posts regardless of personal hardship. But the ability of our military command to carry on in the face of handicaps does not justify this court in denying the Commission an opportunity to make its task easier by following the mandate of the statute to encourage and maintain reasonable rates in aid of national defense.

Assuming the power to regulate, the question of whether the rates are confiscatory is a separate inquiry. However, nothing in the record supports the contention that there is confiscation in the Commission's order. According to the testimony, the average one-way trip involved from the District of Columbia to the Pentagon Building is 6.21 miles, less than half the maximum distance that a person may travel entirely within the District on a single 8 1-3¢ token. Further testimony showed that the cost of the entire trip was 7.06¢, which is below the 10¢ cash fare and the 8 1-3¢ commutation fare ordered by the Commission. As has been said in *St. Joseph Stock Yards Co.* v. *United Stacs:*[3] "The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established."

The only showing as to confiscation was made by the Capital Transit Company. This was done on the theory that the trip from the District Line to the Pentagon Building could be separated from the entire transportation and its cost separately assessed. This evidence is irrelevant because there is no justification for computing the cost of portions of the trip to the Pentagon Building separately. Under the Act the Commission has jurisdiction over the entire transportation. It must, therefore, consider it as a whole.

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[3] 298 U. S. 38, 53 (1936). See also *Darnell* v. *Edwards*, 244 U. S. 564, 569 (1917); *Los Angeles Gas & Electric Corp.* v. *Railroad Commission*, 289 U. S. 287, 305 (1933).

The other points raised by plaintiffs do not require extended discussion. It seems clear that the Commission's jurisdiction over the interstate carriage of passengers to the Pentagon Building includes the power to compel joint rates, to issue commutation tickets, or to make any other regulations necessary to carry out the transportation policy in the Interstate Commerce Act.

Finally, I believe that the court is in error in adhering to its former opinion that the Commission had no jurisdiction over the interstate transportation involved in this case because the carriers were also lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route. The findings of the Commission seem to me sufficient to justify its assumption of jurisdiction in this case on the ground that the carriers affected by its order did no substantial intrastate business over the entire length of the interstate routes which were regulated. However, since the jurisdiction in aid of the national defense is so clear it is unnecessary to discuss this aspect of the case in detail. The order of the Commission should be sustained.

(Sgnd.) THURMAN ARNOLD.

EXHIBIT C

In the District Court of the United States for the District of Columbia

CIVIL ACTION NO. 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon consideration of the pleadings, evidence and argument and supplemental pleadings, evidence and argument and briefs of counsel the Court makes the following:

FINDINGS OF FACT

1. The Capital Transit Company is engaged in the transportation of passengers for hire by bus and street car within the District of Columbia and nearby Virginia, and by bus between two designated termini in the District and the War Department Pentagon Building in the State of Virginia; the Virginia companies, that is, the Arlington & Fairfax Motor Transportation Co., Washington, Virginia & Maryland Coach Company, Inc., and the intervenor, Alexandria, Barcroft & Washington Transit Company are engaged in the transportation of passengers for hire by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the downtown business section of the District on the one hand, and points in Virginia, on the other hand; all three of the Virginia companies serve the Pentagon Building; the Navy Annex is served by the Alexandria line and the Arlington line; the Army Annex and the Washington National Airport are served only by the Alexandria line; all of the plaintiff companies and the intervenor operate lines over both the Memorial Bridge and the Highway Bridge; the routes over which the plaintiff companies and the intervenor operate in the District were prescribed by the Public Utilities Commission of the District of Columbia.

2. The proceeding before the Interstate Commerce Commission, Docket No. 28991, out of which this action arose, was begun by that Commission at the request or complaint of the Secretary of War, concurred in by the Secretary of the Navy, for an investigation into the reasonableness and lawfulness of fares for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Annex, the Army Annex and the Airport, on the other hand. Following the order of this Court of May 15, 1944, enjoining the order of the Commission of January 18, 1944, the Commission without applying to this Court for a modification of the order of this Court of May 15, 1944, proceeded to reopen its hearings, to take further testimony, to make additional findings, and to enter a new order on June 12, 1944, which was, in effect, the same order that had been permanently enjoined by this Court.

3. The Pentagon Building is located adjacent to U. S. Route No. 1, nearly two miles south of the Virginia end of the Memorial Bridge across the Potomac River, and about 1.5 miles west of the Virginia end of the Fourteenth Street Highway Bridge; the Navy Annex is about two miles south of the Virginia end of the Memorial Bridge and about one mile west of the Pentagon Building; the Navy Annex is reached from the Memorial Bridge over Arlington Ridge Road which does not run by the Pentagon; the Army Annex is on the Mt. Vernon Highway about 1.75 miles south of the Virginia end of the Highway Bridge, and the Airport is approximately 0.5 mile beyond.

4. By order dated January 18, 1944, the Commission undertook to fix fares between all points in the District of Columbia, on the one hand, including those served by the electric street railways of the Capital Transit Company, and the Pentagon, the Navy Annex, the Army Annex and the Airport, on the other hand, including joint fares between the Capital Transit Company and the Virginia companies. The supplemental order of June 12, 1944, fixed the same fares between the same points.

5. The order dated January 18, 1944 and the order dated June 12, 1944, undertook to extend and expand the District of Columbia fare-boundary to include the Pentagon Building so as to permit a passenger to ride to the Pentagon on the lines of the Capital Transit Company from any point in the District of Columbia for the existing District fares established by the Public Utilities Commission of the District of Columbia.

6. All of the operations involved are performed within the territorial limits of the District of Columbia commercial zone prescribed by the Interstate Commerce Commission, Washington District of Columbia Commercial Zone, 3 MCC 243.

7. All of the transportation here involved is urban mass transportation within the Washington District of Columbia Commercial Zone.

8. All of the plaintiffs and the intervenor are lawfully engaged in intrastate transportation over the entire length of the lines in the operations here involved in accordance with the laws of each state having jurisdiction.

9. The Court has not passed upon any of the questions of law raised by the parties other than those set forth in those Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction in this proceeding under the provisions of the Act of October 22, 1913; 28 USCA Sec. 47.

2. The Interstate Commerce Commission has no jurisdiction for the purpose of fixing fares or establishing joint fares for the operations here involved since said operations are local and intra-terminal in nature and are conducted wholly within the Washington District of Columbia Commercial Zone designated by the Commission in 3 MCC 243.

3. All of the plaintiffs and the intervenor are lawfully engaged in intrastate transportation over the entire length of the lines in the operations here involved in accordance with the laws of each state having jurisdiction.

4. The Commission has not made adequate findings, either in the original report and order of January 18, 1944, or in the supplemental report and order of June 12, 1944, to support the conclusion that the exercise of its jurisdiction over plaintiffs and the intervenor is necessary to carry out the National Transportation policy.

5. Neither the original record nor the supplemental record contain substantial evidence upon which the Commission could make proper and adequate findings to support the conclusion that

the exercise of its jurisdiction is necessary to carry out the National Transportation policy.

6. The Commission had no jurisdiction to issue the order of June 12, 1944.

7. It is unnecessary to pass upon any of the other questions of law raised by the parties.

EXHIBIT D

In the District Court of the United States for the District of Columbia

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CIVIL ACTION No. 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION No. 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION No. 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION No. 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

ORDER GRANTING PERMANENT INJUNCTION

These causes came on for hearing on the motion of the various carriers to amend the order of the Court entered on May 15, 1944, enjoining the enforcement of the order of the Interstate Commerce Commission of January 18, 1944, so as to provide for the issuance of an order enjoining the enforcement of a subsequent order of the Commission of June 12, 1944; upon the answers of the United States and of the Commission to said motion; upon a motion of the United States for a retrial of the causes and a modification of the order of the Court of May 15, 1944; upon the evidence and record of the proceedings before the Commission, including the evidence and record of the supplemental proceedings before the Commission held in May, 1944; and upon the oral argument and briefs of counsel. And it appearing to the Court that the Commission, in its supplemental order of June 12, 1944, did not make findings sufficient to support its conclusion that the exercise of its authority is necessary to carry out the National Transportation policy, and it further appearing to the Court that the Commission was without jurisdiction to issue the report and order of June 12, 1944, it is by the Court this 20th day of September, 1944,

ORDERED, That the Order of the Interstate Commerce Commission dated June 12, 1944, in Docket No. 28991, be and it is hereby set aside and permanently enjoined and the defendants, their agents and employees, are hereby permanently enjoined from enforcing or attempting to enforce the rates

of fare, joint fares, commutation fares and other requirements set forth in said order, or any fares whatsoever with respect to the transportation services involved in these proceedings.

U. S. GOVERNMENT PRINTING OFFICE: 1944

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 663

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the District Court directly involved (R. 912) is reported in 56 F. Supp. 670, and its earlier related opinion (R. 943) is reported in 55 F. Supp. 51. The original and supplemental reports of the Interstate Commerce Commission (R. 835, 813) are reported in 256 I. C. C. 769 and 258 I. C. C. 559.

JURISDICTION

The final decree of the District Court (R. 952) was entered September 20, 1944, and the appeal was allowed the same day. (R. 954.) Probable jurisdiction was noted December 11, 1944. The Court's jurisdiction rests on the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; 28 U. S. C. Supp. III, secs. 45 and 47a) and section 238 of the Judicial Code as amended by the Act of February 12, 1925 (c. 229, 43 Stat. 936, 938, par. (4), 28 U. S. C., sec. 345).

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix.

QUESTIONS PRESENTED

The Commission, in a proceeding involving (1) the street car and motor bus fares charged by the Capital Transit Company for transportation between points in the District of Columbia and the Pentagon Building in Virginia, (2) the through fares charged by the Transit Company and certain motor carriers (hereinafter called the Virginia Lines) for transportation between points in the District and the Pentagon Building and other Government installations in Virginia and (3) the local fares charged by the Virginia Lines between their terminals in the District and the installations in Virginia, determined, after hear-

ing, that the fares (with exceptions) were unreasonable and by order prescribed the fares to be established and charged in lieu thereof. In enjoining the order, the District Court held (reversing the Commission in this respect) that the motor carrier transportation involved fell within the "commercial zone" exemption[1] from the Act's application and was exempt except as the Commission's conclusion, reached in the case, that such application was necessary to carry out the national transportation policy was validly made. As to this latter, the court held that the Commission's conclusion was without support of adequate findings and evidence.

The primary questions presented, therefore, are whether the District Court did not err (1) in holding that the transportation involved fell within the exemption from the Act, and (2) in holding that the Commission's conclusion, removing the application of such exemption, was inadequately supported by the findings and evidence.

Further questions presented[2] are whether the Commission exceeded its statutory authority

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[1] Interstate Commerce Act, Part II, Sec. 203 (b), (7a), (8).

[2] The District Court, having held that the transportation involved was exempted from the Act except as the Commission's conclusion, in effect removing the exemption, was supported by adequate findings, and that such was not the case, refused to pass upon the further questions raised, but, for reasons hereinafter given, it is believed and understood that such refusal does not preclude review by this Court.

(1) in acting directly on the question of the reasonableness and lawfulness of the fares instead of referring the matter to a joint board;

(2) in assuming and exercising authority over the street car as well as the motor bus operations of the Transit Company, and

(3) in prescribing token and ticket book fares—alleged to be commutation fares,

and whether the level of fares prescribed by the Commission was confiscatory, without support of substantial evidence or in any other respects arbitrary.

STATEMENT

This is a direct appeal from a final decree (R. 952) of the court below setting aside and permanently enjoining an order of the Commission of June 12, 1944, made in connection with a supplemental report of the same date issued upon rehearing and reconsideration in a proceeding known as No. 28991, *Passenger Fares Between District of Columbia and Nearby Virginia.*

1. COMMISSION PROCEEDING

The Commission proceeding was an investigation which, at the request of the Secretary of War, concurred in by the Secretary of the Navy, the Commission, by order of July 3, 1943, instituted into the reasonableness and the lawfulness

otherwise of the fares of the carriers involved[3] for the transportation of passengers between points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, on the other hand.[4] In the original report, the Commission, in describing the operations involved in the proceeding, said (R. 837):

> The Transit Company furnishes regular urban and suburban street-car and bus service for the transportation of passengers in the District and nearby Maryland and bus service between the District and the Pentagon. The Virginia Lines transport passengers by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the downtown business section of the District, on the one hand, and points in Virginia, on the other. All four of the respondents serve the Pentagon. The Navy Annex is served by the Alexandria Line and the Arlington

[3] The Capital Transit Co., the Alexandria, Barcroft and Washington Transit Co., the Arlington and Fairfax Motor Transportation Co., and the Washington, Virginia & Maryland Coach Co., hereinafter referred to as the Transit Company, the Alexandria Line, the Arlington Line and the Coach Company.

[4] Temporary operating authorities of the Transit Company and Coach Company have been extended. See Appendix B.

Line. The Army Annex and the Airport are served only by the Alexandria Line. All of the respondents operate lines over both the Memorial Bridge and the Highway Bridge. * * *

Pentagon service by the Transit Company is operated only during the morning and afternoon rush hours and the transportation performed is practically 100 percent from the District to the Pentagon in the morning and from the Pentagon to the District in the afternoon. * * *

Virginia installations served by the Alexandria Line and the Arlington Line are located on some of the regular routes of those lines to and from points beyond, although operation over additional mileage, which assumes considerable proportions in the aggregate, is necessary in order to reach points of actual loading and unloading at such installations. Regularly scheduled busses serve these points throughout the day, and additional busses are operated during rush hours. These lines have a heavy volume of passenger traffic to the District during the morning rush hours and from the District during the afternoon rush hours. The traffic here considered is in the reverse direction during those respective periods. Under the system of staggered working hours now in vogue, it is apparent that, to a certain extent, the same busses may be used in transporting Government employees between Virginia and the District, in op-

posite directions, during the same rush-hour period.

The Coach Company is a minor factor in the transportation here considered. It serves only the Pentagon, and that service is not over a regular route, but consists of a few out-of-route trips during the morning and afternoon rush hours.

Fares of the Transit Company for its service in the District are 10 cents, three tokens for 25 cents, or a weekly pass which is sold for $1.25. Free transfers are issued between all company lines. This company operates two bus lines to the Pentagon, one of which, its R–2 line, is routed over the Memorial Bridge and has its District terminal at 19th and C Streets, N. W., and the other of which, its Q–2 line, is routed over the Highway Bridge and has its District terminal at 7th Street and Constitution Ave., N. W.[5] Over the R–2 line the fare is 5 cents each way, without restriction or limitation. The fare, however, over the Q–2 line from or to any point in the District served by the Transit Company (including its Q–2 line terminal) is a District fare plus 5 cents; that is to say, every passenger using the Q–2 line, whether or not using the service of the Transit Company between his home and the District terminal of the Q–2 line, must hold a weekly pass,

[5] The distances over the R–2 line and Q–2 line from their respective District terminals to the Pentagon are 3.5 miles and [illegible] miles, respectively. (R. 838.)

or he must pay a 10-cent cash fare or a token in addition to the 5 cents.

A uniform one-way fare of 10 cents is maintained by the Virginia lines between their District terminals and all points in zones ranging from 6.5 to 8 miles in extent, including the Virginia installations,[6] with the single exception that the Alexandria line sells a book of 26 tickets for $1.95 or 7.5 cents each, which are good for transportation between its District terminal and the Army Annex.[7] (R. 839.)

The total personnel employed at the Virginia installations is upwards of 40,000, about 30,000 of whom are employed at the Pentagon. Somewhat less than half of this personnel resides in the District and travels back and forth each work day.

The above facts, together with a great deal of other evidence, were developed at hearings held in Washington, D. C., on three days in August

[6] From 12th and F Streets, N. W., (within two or three blocks of the terminals of all the Virginia lines) the distances over the Highway Bridge are about 3.7 miles to the Pentagon, 4.9 miles to the Navy Annex, 4 miles to the Army Annex and slightly farther to the Airport. Over the Memorial Bridge the distances are somewhat more than a mile longer. (R. 839.)

[7] Service is operated by the Arlington line between Rosslyn, Va., and the Pentagon and Navy Annex, and between the Memorial Bridge and the Navy Annex; and the Alexandria Line operates a service between the Memorial Bridge and the Navy Annex. On these lines the one-way fares are 5 cents. (R. 839.)

and four days in September, 1943. The hearings were presided over by one Commissioner and an Examiner and all the carriers, the State Corporation Commission of Virginia and the Army and Navy Departments took active parts in developing the record.

The position of the Army and Navy Departments was, generally speaking, that, for fare making purposes, the District base zone should properly and reasonably include the Virginia installations, and in support, they urged, among other things, that in view of the close proximity of the installations to the District and the mass movement of employees to and from them each day, they were as much a part of the business community of the District as if located within it; that, if the installations were physically located within the District, the local fares would apply and the mere fact that they were separated by political boundaries was no warrant from a rate-making standpoint for the much higher fares; and, further, that to the extent the service required operations outside the District, the differences in transportation conditions were more favorable than otherwise—peak loads and good highways without the interruptions met with in the City. (R. 842, 843, 11–16.)

On the other hand, the position of the Transit Company and other carriers was, generally speaking, that the operations to and from the Virginia installations in fact extended beyond the District

boundary; that the operations of the Transit Company's Pentagon bus line and of the other lines to the Virginia installations were of special nature and should be considered apart from that portion of the employee's travel over the other lines of the Transit Company between their homes and points of interchange; and that prior to the request made to the Commission to undertake its investigation into the fares, there had been negotiations through a regional committee and a level of fares suggested by the latter had been acquiesced in by the carriers.[8] (R. 845–848, 698–712.)

The Transit Company stressed particularly that it had undertaken its Pentagon operations, not upon its own volition, but upon the "plea" of the War and Navy Departments and as in the nature of a "war measure" or "war effort" (R. 700); and that the Departments were put on notice that there would be an extra fare of 5 cents.[9] (R. 710,

[8] The regional committee's proposal was for a fare of 13⅓ cents between the homes of the employees in the District and all the installations and via the lines of any of the companies serving the installations. The interline fare was to be evidenced by two coupon tickets sold in books of 12 one-way rides for $1.60. (R. 847.)

[9] In *Sou. Pac. Ry.* v. *Int. Com. Comm.*, 219 U. S. 433, it was held that the fact that the development of the lumber industry in the Willamette Valley had been encouraged by the maintaining of low rates which the railroad subsequently increased was not a factor that might be treated as supporting a conclusion that the increased rate was unreasonable. The position here of the Transit Company appears to be the reverse of this, that is, its position appears to be that, since

719.) The Company conceded, however, that, because of the position occupied by it in the District of Columbia, it was not without duty in the premises (R. 701) and, while doubtless it may have been willing to leave to the Virginia companies (R. 719) or others, the rendering of that part of the service between the Virginia installations and particular, limited, termini in the District, that is not to say that it would have been equally willing to leave to a competitor, or competitors, the rendering of the complete service between the Virginia installations and the homes of the employees in the District. And, furthermore, while doubtless the costs and yield of the entire operations of the Transit Company in the District were not material to the Commission's investigation (R. 671), it is manifest that the costs and yield of that part thereof consisting of the travel of the employees between their homes and points of interchange with busses operating to and from the Virginia installations were wholly material to the investigation.

In connection with the fact, urged by the Departments as warranting extension of the District base zone, that the Virginia installations are just across the boundary line, and the resulting fact

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the Departments were put on notice of the fares it expected to charge in undertaking the Pentagon operations and, since the fares were not protested and suspended when filed, this created an in-effect estoppel (*idem.*, p. 451) against a subsequent inquiry into their reasonableness.

that almost the whole passenger transportation involved (i. e., between the employees' homes in the District and the installations) is physically within the District, the Departments submitted a computation (R. 844) based upon information obtained from responses to a questionnaire of 9,500 employees at the Pentagon and Army Annex which showed that the average one-way distance travelled by such employees between their homes in the District and the installations was 6.21 miles, and that this was considerably less than one-half the maximum distance over which a passenger may travel for one fare within the District. Based upon the above considerations and much other evidence of various sorts and kinds, the Departments contended that

> * * * anything higher than a District fare is unreasonable for the transportation of persons employed at the Virginia installations between their places of employment and their places of residence in the District; and that the collection from such passengers of fares higher than those for similar or longer rides in the District results in unjust discrimination and undue prejudice.

In addition to the reliance placed by the Transit Company on its position that it had undertaken the Pentagon operations on the "plea" of the War and Navy Departments and with full notice of the fares it intended to exact, that such

operations in fact extended beyond the District and were of special kind, the company relied particularly on an exhibit purporting to show that its Pentagon bus line was being operated at a loss. This showing, however, the Commission, upon analysis, found to be faulty and particularly in the respect that the exhibit (Ex. 89, R. 337–355) treated the operation of its Pentagon bus line as independent, whereas the traffic originated or terminated on practically every bus or streetcar line in the District and, consequently, the costs and yield were merged with those of the District operations and might not properly be considered as those of an independent operation (R. 845). Other objections of the carriers were that the extension of the District base zone to include the Virginia installations would encourage demands for similar action with respect to Government installations in nearby Maryland and to suburban communities in that State and that it would result in a difficult regulatory problem because of the alleged overlapping jurisdiction of the Interstate Commission and the District Commission.

Concerning the objections of the carriers last above mentioned, the Commission did not consider that they afforded grounds for its withholding action in the matter if action was otherwise called for on the record before it. "In

such circumstances," the Commission said (R. 850):

> * * * cooperation with State authorities is authorized by section 205 (f), part II of the Act. The record shows it to be the practice to maintain a uniform zone fare in certain other areas where the physical layout bears a general resemblance to that before us here, for example, between and within Kansas City, Mo., and Kansas City, Kans. Similarly, the zone fare in that situation is also subject to more than one regulatory authority.

Further with respect to the exhibits and studies of costs: As above noted, the Commission gave careful consideration to the Transit Company's exhibit of costs, although pointing to the fact that it was defective, or incomplete, in the respect particularly that it covered the company's Pentagon bus line operations only, whereas the traffic originated or terminated on practically every line operated by it in the District.[10] In this connection, however, the Commission stated, in effect, that, while cost of service was an important factor and it was giving due weight to the cost evidence in arriving at its conclusions, such cost was not the sole or controlling consideration; and,

[10] The respondents not only objected to the Commission's consideration of evidence showing their income and rates of return on investment or value, in which they were sustained (R. 124, 137, 671), but also stressed the difficulties of any segregation of revenues and expenses in connection with the particular traffic. (R. 146, 147.)

following this, it referred to the fact that, so far as passenger fares in urban communities are concerned, the usual and accepted basis is a group or zone adjustment "under which the same fare is charged for a continuous trip between any two points in a zone regardless of how long or how short it may be." (R. 10.) Concerning the application of such a zone adjustment to the situation before it and the consideration of the "District basis of fares as the measure of reasonableness, the Commission later said (R. 848–849):

> The making of transportation rates or fares on a group or zone basis is not an uncommon practice. Measured by distance alone a certain degree of inequality is naturally inherent in such a system. The same rate or fare is charged for a short distance as well as for the longer ones within the same group or zone, and from a point in one group or zone to a point in another the rate or fare may be higher for a shorter distance than that between points in the same group or zone. The existence of situations of this kind does not in itself indicate any legal impropriety in such an adjustment of rates or fares. The important considerations are whether or not the transportation conditions within a given group or zone are such as to justify the observance of a common level of intragroup or intrazone rates or fares and whether the group or zone boundaries have been reasonably drawn.
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> This is urban, mass transportation between points in the District and points in Virginia just beyond the District-Virginia line and is the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District. * * * It is to be noted that there are no residential areas between the District and the Virginia installations. These installations represent to all intents and purposes an extension of the main business area of Washington. The operations here considered are under favorable conditions. In addition to capacity loads, the movement for the most part is over a new and elaborate road system especially designed and built to accommodate such traffic. These roadways consist in large part of one-way traffic lanes, and they are without impediments commonly encountered on city streets, such as grade intersections, traffic lights, left turns, and resultant congestion. Large and expensive improvements and additions have also been made in the traffic arteries on the District side of the Potomac. Respondents have the use of these new and improved facilities in other operations conducted by them.

And further on the Commission said (R. 850):

> So far as the Alexandria and Arlington Lines are concerned, it is shown that they have reaped a particularly important advantage from this traffic, which makes for

economical and profitable operation. Formerly their traffic was unbalanced, but they now have an important volume of counter-flow traffic, an advantage which is rather unique in the business of urban or suburban transportation.

Other evidence considered and underlying findings made by the Commission will be referred to in the argument portion of this brief. By the ultimate, or concluding findings in its original report, the Commission found (R. 850, 851) that the existing bus fares and bus-streetcar fares of the Transit Company, applying between points in the District to the Pentagon, were unreasonable in instances[11] where they exceeded the District fare, and it prescribed fares not exceeding the District fares, including all transfer privileges, for future application; it found that the local fares of the Virginia lines between the Virginia installations and the terminals of those lines in the District were unreasonable to the extent they exceeded a fare of three tokens for 25 cents, subject to the proviso, however, that the present cash

[11] In those instances where they were less than the District fare, the Commission stated that they might be increased to such basis (R. 850). This would permit the Transit Company to increase its 5 cent fare now charged between the District terminal of its R–2 line and the Pentagon, but since, as above noted, the fare now charged by the Transit Company between the District terminal of its Q–2 line and the Pentagon consists of 5 cents plus a weekly pass, a token or 10 cents, this latter fare would have to be reduced to District basis.

fare of 10 cents per single trip might be continued;[12] and it found that the combination bus and bus-streetcar fares of the Transit Company and the Virginia lines for multiple trips between the Virginia installations and points in the District were unreasonable to the extent they exceeded "a fare of $1.60, valid for 12 one-way trips, equal to 13⅓ cents per one-way trip," which fare, including transfer privileges on the lines of the Transit Company, it prescribed as "reasonable for the joint service indicated" and which, it further found, might "be evidenced in the form of tokens or ticket book valid for 60 days or both."

2. FIRST COURT SUITS

In suits brought by the Transit Company, the other carriers and the State Corporation Commission of Virginia, under the Urgent Deficiencies Act to set aside the Commission's order of January 18, 1944, prescribing the fares found reasonable, the Court (District Court for the District of Columbia) enjoined and set aside the order on grounds, not bearing on the merits, but involving the provisions respecting the "commercial zone exemption" contained in section 203 (b) (7a) and (8) of the Interstate Commerce Act, and which provide in part that:

[12] As for the local fare of 7.5 cents now charged by the Alexandria line between its District terminal and the Army Annex, this fare, the Commission said, might be increased to the 8⅓-cents token basis.

> Nothing in this part * * * shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (a) taxicabs * * *; or (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft *nor, unless and to the extent that the Commission shall from time to time find such application is necessary to carry out the national transportation policy declared in this Act,* shall the provisions of this part * * * apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities * * * *provided that the motor carrier* engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce *is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction;* * * * [Italics supplied.]

In its original report, the Commission, dealing first with subdivision (8) of the above and thereafter with subdivision (7a), had said and found (R. 843) that:

> As to the Transit Company and the Coach Company there is no doubt that we have

> jurisdiction because one does not perform intrastate transportation in Virginia and the other does not perform it in the District. In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District it is reasonably clear that their fares between the Virginia installations and the District are subject to our jurisdiction. In any event, we are of the opinion and find that application of the act to that transportation is, in the language of section 203 (b) (7a), necessary to carry out the national transportation policy. We conclude that we have general jurisdiction over all of the fares under consideration.

The District Court, in enjoining the Commission's order of January 18, 1944, held that the Commission had not made the findings necessary to support its conclusion that application of the provisions of the Act was necessary to carry out the national transportation policy; and it also held (R. 919) that, except as such application of the Act might be necessary to carry out the said policy, the transportation involved was exempted by subdivision (8), the Court holding in this connection that the Transit Company and other carriers were "also lawfully engaged in the intrastate transportation of passengers over the entire length of" their interstate routes.

Responding to the Court's holding of inadequacy of findings in its report to support its

conclusion that application of the Act to the transportation was necessary to carry out the national transportation policy, the Commission reopened its proceeding for further consideration and hearing. And, since the question as to the applicability of the exemption provision was closely related, the reopening was made to include that question. The further hearing was limited to the matters passed upon by the Court but the reconsideration provided for was unrestricted.

At the further hearing, counsel for the Transit Company and other carriers appeared specially (R. 777) and filed motions to discontinue the proceeding on the ground that the matters placed in issue were *res judicata* by reason of the District Court's holdings above referred to, including its holding of inadequacy of findings by the Commission to support its taking of jurisdiction as necessary to carry out the national transportation policy (R. 781). As to the latter holding, the position of counsel for the carriers was that, since that holding was legal, the Commission was foreclosed from reopening its proceeding and the only proper course was to take an appeal to the Supreme Court (R. 782). The presiding Commissioner overruled the motions only so far as necessary to enable the hearing to proceed, and they were subsequently passed upon and overruled by the Commission upon grounds fully stated in its supplemental report (R. 815–820).

At the further hearings, the carriers and the Virginia Commission offered no evidence but their counsel cross examined witnesses appearing in behalf of the Departments and the Commission's Bureau of Inquiry. In its supplemental report, (R. 813), issued June 12, 1944, the Commission dealt specifically with the matters involved in the Court's opinion and which were in issue for the taking of further evidence. It discussed at length and made subordinate findings in support of its conclusion that its taking of jurisdiction over the transportation involved was necessary to carry out the national transportation policy. In addition, it discussed at length the facts showing the extent to which the carriers were engaged in the intrastate transportation of passengers over their interstate routes and concluded that none of them was so engaged "over the entire length" of its interstate route, or routes, in question, and, accordingly, that the transportation involved was not excepted from the Act by the exemption provisions of section 203 (b) (8). It also concluded that the prescribed fares were not commutation fares, and that in any event it had power to compel their adoption, thus rejecting the contentions to the contrary urged by the carriers in the District Court but not passed upon by the court. In all other respects the Commission affirmed the findings and conclusions adopted in its prior report. Pursuant to the said findings and conclusions, as reconsidered and reaffirmed, the Com-

mission, by its order of June 12, 1944, (R. 827) which accompanied its supplemental report, prescribed for the transportation involved fares the same in level and other respects as those prescribed by its prior order of January 18, 1944.

3. SECOND COURT PROCEEDING

Thereafter the carriers and the Virginia Commission filed a motion, or complaint, in the district court, asking that the Commission's order of June 12, 1944, be enjoined and set aside and basing their prayer in part on allegations that the order was violative of the court's decree enjoining the earlier order and constituted "a refusal to follow the statutory provisions for appeal" and in part on general allegations of unlawfulness, that is, that the order was "unreasonable, arbitrary and contrary to the evidence and in excess of the statutory authority of the Commission" (R. 925). Following the filing of this motion, or complaint,[13] the United States filed with the court a motion for new trial and new judgment and the Commission filed an answer. In its answer, (R. 929) the Commission averred, among other things, that neither its order of June 12, 1944, nor its reopening of the proceeding, was violative of the district court's decree, but that, on the contrary, the action taken by it was responsive thereto; that, since it con-

[13] The pleadings of the carriers, of the United States and the Commission, are more fully described in the Jurisdictional Statement (pp. 9, 10, 12) filed herein.

sidered that the court was right in holding that it had not made adequate findings to support its conclusion that its taking of jurisdiction was necessary to carry out the national transportation policy, it would not have been justified in appealing therefrom; and that the course which it followed of immediately reopening the case did not constitute a failure to follow the statutory procedure, but, on the contrary, was squarely in line with its special purpose of expediting the court review of action of the Commission and also with the duty of the Government and the Commission not to burden the Supreme Court with unnecessary appeals.

In further answer, the Commission said that, as for the question of the applicability of the exemption provision of section 203 (b) (8) of the Act, while doubtless that question was legal, it was one of basic jurisdiction depending largely on fact, and that, where in such case, and as here, it was of the view that the record of facts, or its report, was in need of amplification or clarification, it believed that it was expected to take corrective action and not to appeal in such condition of the record; that any other rule (whether of *res judicata* or other doctrine designed especially to fit private litigation) would be contrary to the public interest and generally in conflict with the objectives of the special procedure for review of Commission action; that, even assuming that it was wrong in this, which it did not believe to be the

case (Cf. *Baltimore & O. R. Co.* v. *United States*, 24 F. Supp. 734, 735; *United States* v. *Griffin*, 303 U. S. 226, 228) its reopening of the proceeding directly responsive to the Court's holding of inadequacy of findings to support its taking of jurisdiction under the national transportation policy, was action, which upon the curing of the defect, would clothe it with jurisdiction; and that, since, contrary to the allegations of the carriers, it had made full and adequate findings curing such defect, it had thereby become clothed with the jurisdiction which it thereupon exercised.

As for the general allegations in the carriers' pleading, that the Commission's order was "unreasonable, arbitrary and contrary to the evidence and in excess of the statutory authority of the Commission" (R. 925), the Commission's answer fully and specifically denied those allegations. (R. 929–932.)

The United States, in addition to filing its motion, above referred to, filed a statement in answer to the motion (R. 933) or complaint, of the carriers and the Virginia Commission, in which the position taken by it was generally the same as that of the Commission and in which it stressed the fact that the reopening of the proceeding by the Commission to supply the findings which the court found lacking in its previous report was responsive to the court's opinion and that the Commission's action in this respect was its con-

sistent practice and entirely in harmony with court decision.

Following hearing on the carriers' motion and that of the United States (the case being submitted on the original and supplemental pleadings, evidence, argument and briefs, R. 949), the district court, on August 25, 1944, rendered its decision denying the motion of the United States and holding (Justice Arnold dissenting) that "the order of the Commission of June 12, 1944 (should) be set aside and its enforcement permanently enjoined; and on September 20, 1944, the court entered its findings of fact and conclusions of law and its decree permanently enjoining the order.

SUMMARY OF ARGUMENT

I. Contrary to the lower court's holding, the Commission's findings in support of its conclusion that the application of the Act to the transportation involved is necessary to carry out the national transportation policy, including its purpose of meeting the needs of the national defense, are entirely rational and adequate and fully substantiated by the evidence. The lower court's ruling that, in order to support the Commission's taking of jurisdiction as necessary to meet the needs of the national defense, it must have appeared that the government's war work was being materially affected, is manifestly wrong, in that such ruling would mean that the Commission

would have to have evidence of "real harm" already "done to the war effort" (R. 947) before it could in any such case assume jurisdiction to investigate the lawfulness of the carriers' rates and practices.

The evidence here and the Commission's findings show that the fares between points in the District and the Government installations were regarded as excessive both by high officials of the Army and Navy and by the employees at the Government installations; that, so far as most of the employees were concerned, such fares were important items in their budgets of monthly expense; that the fares were a source of dissatisfaction among the employees and an element entering into separation from government service at those points; that the work done at the Pentagon and other Government installations was vital to the war effort; and that the maintaining of a high morale among employees was essential. In addition and, certainly, of equal importance, is the showing by testimony and otherwise that responsible officials of the Army and Navy Departments considered that the Commission's assumption of jurisdiction over the fares paid by the thousands of workers employed at the Virginia installations was necessary to the war effort. It is apparent that, in order to be of that opinion, such officials need not have had before them facts and figures showing that the war effort was being materially affected, or for that matter have been

concerned with anything other than the necessity of maintaing employee morale and efficiency at a high level in order to ensure the best possible war effort at the national military headquarters. And it is also apparent that the statute in setting the standard of what is "necessary" in order adequately "to meet the needs x x x of the national defense" is aiming, not at a low, but at a high standard of needs.

The Commission is not, of course, given authority to reduce fares for the reason simply of their hampering effect on the war effort or for any reason other than that they are shown and found to be unreasonable or otherwise unlawful. But it clearly does not have to await evidence of real harm "done to the war effort" before it may take jurisdiction to inquire into the reasonableness of the fares involved.

A. While the Commission considers that its taking of jurisdiction here is necessary to carry out the national transportation policy and, while it is convinced that its conclusion to that effect is amply supported by findings and evidence, it is also of the view, contrary to that of the lower court, that the transportation involved does not fall within the so-called "commercial zone" exemption (Sec. 203 (b) (8)) from the Act, this because by its terms such exemption does not apply unless the motor carrier engaged in the interstate transportation involved

is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction.

The testimony of record of the President and General Manager of the Transit Company is that his company is not authorized to engage, and does not engage, in intrastate transportation in Virginia. He supports this by further testimony, that it is the company's intention to operate the Pentagon bus lines as a through express type of service between the District and the Pentagon building, and that, so far as he knows, those lines do not pick up, or discharge, passengers outside the District except at the Pentagon. There is no evidence or testimony disputing the testimony of the company's President and General Manager, but, on the contrary, his testimony is supported by statements and provisions in the company's tariffs and in applications made by the company to the Commission for temporary operating authority.

With respect to the Virginia lines, the testimony at the original hearing shows that the Coach Company performs no intra-District service whatever and that the Alexandria Line and Arlington Line perform only limited intra-District service. This testimony is substantiated by evidence introduced at the further hearing which consists of

orders of the Public Utilities Commission of the District. The orders specify the authorized routes and stops and establish that the Coach Company is not authorized to perform any intra-District transportation, that the Alexandria Line and the Arlington Line are not authorized to perform any intra-District transportation whatsoever so far as their Memorial Bridge routes are concerned and that, as for their Highway Bridge routes, they are also not authorized to engage in intra-District transportation, except between specified stopping points, one on inbound and one on outbound movements, opposite the Jefferson Memorial, and specified stops north of Maine Avenue. This leaves a very considerable area north of Maine Avenue within which the two companies are without authority to engage in intra-District transportation over their Highway Bridge routes.

Accordingly the factual situation is shown to be that the Alexandria Line and the Arlington Line, as well as the Transit Company and the Coach Company, are not engaged lawfully or otherwise in the intrastate transportation of passengers over the entire length of their interstate route, or routes. And having in mind that the two Lines do not fall within the language of the exemption even as to their Highway Bridge routes, it would seem that they are not exempt, particularly in view of the settled rule that exemptions from remedial legislation should be

strictly read so as not to narrow the statute's remedial processes without clear warrant in the language. *Piedmont & Northern Ry.* v. *Int. Com. Comm.*, 286 U. S. 299, 311.

II. The contention of the Virginia Corporation Commission, the Coach Company and the Arlington Line, that the Commission should have referred the proceeding initially to a joint board, is without merit. While with respect to operations of motor carriers not involving more than three States, the Act (sec. 205 (a)) directs the Commission to refer certain matters to joint boards, including "complaints as to rates, fares and charges of motor carriers," it does not require the reference to joint boards of proceedings as to such rates, fares and charges, instituted on the Commission's own motion. The allegations of the said appellees that the proceeding was instituted on complaint of the Secretary of War is contrary to the statements of the Commission, made both at the hearing and in its reports, that the investigation was instituted at the request of the Secretary of War. The Commission seldom institutes investigations on its own motion in the sense that the matter is one "hit upon" solely by the Commission and without its attention being called to the matter from the outside. It often institutes investigations which as a matter of procedure are on its own motion although in fact they are investigations which it has been directed to undertake by the Congress. Very

frequently other of its investigations on its own motion are preceded by letters from shippers, carriers, and communities, calling attention to alleged delinquencies or failures of the carriers. And, not infrequently matters of such sort are called to its attention by other departments or agencies of the Government.

The letters of the Secretary of War are of record and they show on their face that they are not complaints but are requests simply intended to ask the Commission to exercise its well known authority to institute an investigation on its own motion. It must be assumed that Congress is entirely familiar with the manner in which Commission proceedings arise, both complaint proceedings and those instituted on the Commission's own motion, and that, in providing for joint boards, it did not use the word "complaint" in a vague and indefinite way, but intended to give to the term its well recognized meaning of a complaint to which real rights are attached. *Cf. A. T. & S. F. Ry. Co. et al.* v. *United States,* 284 U. S. 248, 260. Here it is clear that the letter of the Secretary of War was not a complaint of such sort or other than a request leaving the Commission with full discretion in determining whether to undertake the proceeding.

Furthermore, the correctness of the Commission's action here in proceeding without referring the matter initially to a joint board is, it is believed, shown to be beyond question by the

consideration that the Transit Company's street railroad lines are essential to, and inseparable from, the motor carrier passenger transportation involved.

III. Contrary to the allegations of the appellees, the Commission, in prescribing the fares for the transportation here involved, that is, the individual fares over the Transit Company's own routes and the joint fares over the through routes between the Transit Company and the Virginia lines, acted entirely within its authority in requiring the application of such fares, not only to the Transit Company's motor bus lines, but also to its electric street railroad lines and points in the District reached by the latter lines. While, as stressed by the appellees, it was held in *Omaha Street Ry.* v. *Int. Com. Comm.*, 230 U. S. 324, that street electric passenger railroads were not included among the "railroads" to which the Act applied, the Commission's order involved in the case was entered prior to the 1910 amendment of the Act whereby it was provided that the Commission shall not "establish any through route, classification, or rate between street electric passenger railroads not engaged in * * * transporting freight * * * and railroads of a different character." And it is also to be noted that in the later related decision in *United States* v. *Village of Hubbard*, 266 U. S. 474, this Court, in holding that interurban electric passenger railroads were "railroads" subject to the Act and

Commission authority generally, said that this was shown by the fact that Congress, in enacting recent amendments, had limited the authority over them only in respect of certain of the Act's provisions.

The Commission, in its report, comments on both of these decisions but, although from its comment on the *Omaha case, supra,* it appears that it does not accept without reservation the holding in that case as now applying, it proceeds on the assumption that it does and in reliance on the fact that the Transit Company is not now, whatever it may have been in the past, a street electric passenger railway in the usual sense of that term. And, in this connection the Commission points out that the company now conducts bus operations throughout the District and in adjacent territory and that its bus and street car operations are inseparably commingled and blended, with a uniform fare applying to both and transfers interchangeable between street cars and busses. Because of these circumstances, the Commission states, effective exercise of its express authority to regulate the bus fares necessarily involves some regulation of the street car fares, and in support of this it points to the fact that the situation is analogous to the relation between intrastate and interstate railroad traffic, concerning which this Court in *Wisconsin Railroad Comm.* v. *C. B. & Q. R. Co.,* 257 U. S. 563, said (p. 568):

> Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them.

Equally pertinent to the situation as the decision in the above case, are other decisions of the Court pointing to the effect on the construction to be given the Act which necessarily results from a commingling of operations so inseparable that the authority which the Commission plainly has over certain of the operations can only be effectively exerted by exercise of authority over the remainder. *United States* v. *N. Y. Cent. R. R.*, 272 U. S. 457, 464. And with respect to the question of whether the Act may be reasonably read as embracing the Transit Company's street railroad operation, the decision in the *Omaha Case*, *supra*, makes plain that, even at the time of its rendering, the Commission's authority in terms extended unqualifiedly to common carriers by railroad and that it was only by virtue of construction that it was decided that it did not extend to street railroads.

Furthermore, it is also true that that decision in any application it might have subsequent to the 1910 amendments of the Act is left wholly uncertain by discussion at the end, from which it appears that counsel for the Government contended in effect that Congress in the 1910 amendments showed that it considered street electric

passenger railroads to be within the Commission's general authority by its action in exempting them from particular authority of the Commission only, namely, the authority (otherwise in terms given) to order the inclusion of such railroads in through routes and joint rates with railroads of a different character. While the Commission's order involved in the case was made prior to the 1910 amendments and, for that reason, the Court did not pass upon the question raised by the contention as to the effect of the amendment on the Commission's authority, the decision makes plain that the question was left open. And, in connection with that fact, the decision in the *Village of Hubbard Case, supra,* is clearly pertinent and significant. There, as above stated, the Court, in sustaining the Commission's action in assuming general authority over electric interurban passenger railroads, says that the correctness thereof was "confirmed by the action of Congress, which, in recent amendments, limited, in respect to certain subjects, the authority over them." Among the limitations upon the Commission's authority which the decision thereafter specifies is that contained in the 1910 amendments. The others specified in footnotes) are contained in certain of the many amendments and additions to the Act, enacted in 1920. All refer to street and suburban as well as interurban electric railways and all limit, in respect to certain subjects, the Commission's authority over street and suburban as well

as interurban electric railways.[14] The Court was not called upon to say whether the same exemptions of the street and suburban railways had like operation and effect as in the case of the interurbans, since the status of the former were not in issue, but it is difficult to reach any conclusion other than that the opinion leaves open to be gathered from its reasoning that such was in fact the case.

Moreover, the comparatively recent amendments extensively enlarging the Commission's authority over transportation, including those placing with it authority over motor carriers, cannot be disregarded in any consideration of the situation shown in this case. As found by the Commission, the motor bus operations involved, over which it has clear authority, are so commingled and blended with the Transit Company's street railroad operations in the rendering of the interstate transportation between points in (and throughout) the District and the Virginia installations that it cannot effectively exert authority over the bus operations without also exercising authority over the street railroad operations. Accordingly, even aside from the effect of the exemp-

[14] The opinion states (266 U. S. 474, 480) that the provisions "differentiated interurban electric railways from street and suburban railways by specific reference to each, although a distinction in treatment was made in only one case." But this statement, it is believed, is not intended to distinguish the street and suburbans from the interurbans in the particulars upon which the decision is reached.

tions of street railroads from certain of the Act's provisions only, this situation, coupled with the consideration that the Act, in its terms, unqualifiedly confers on the Commission authority over common carriers of passengers by railroad, supply, in and of themselves, not only reasonable, but most compelling warrant for reading the Act as vesting the Commission with the authority which it exercised. *United States* v. *N. Y. Cent. R. R.; supra.*

A. Contrary to the appellees' allegations, the Commission, in prescribing joint fares between points in the District and the Virginia installations for application over the through routes between the Transit Company's District lines and the Virginia lines, acted entirely within its authority. Since the Commission's authority to prescribe joint fares between the Virginia bus lines and the Transit Company's District bus lines is clear and express, the only question of substance is with respect to its authority to require application of the joint fares to the street car lines of that company and to points in the District reached by the latter lines. In connection with this question, the Commission, in its report, made the finding that

> Section 216 (e) of the Act authorizes us to require the establishment of through routes and joint fares whenever deemed by us to be necessary or desirable in the public interest. Through routes are now in effect,

> and we find that joint fares on this traffic interchanged between the Transit Company and the Virginia lines are necessary and desirable in the public interest.

Since section 216 (e), so far as it deals with the establishment of through routes and joint fares, speaks only of motor carriers, it is manifest that the Commission's above findings are to be read in connection with its earlier findings that the Transit Company's motor bus and street car operations are so commingled and blended that in order to exercise its undoubted authority over the bus operations, it is also necessary for it to exert authority over the company's street car operations. By reason of that fact and in view of relevant decisions of this Court, the Commission concluded and held that it had "jurisdiction to require the application of the fares herein found reasonable to the combined bus-street car operations of the Transit Company and to those (combined) operations and the bus operations of the Virginia lines" (R. 842). The Commission had, just prior to its finding that, because of the blending of its operations, the transit Company was no longer a street electric railway in the usual sense, made mention of the fact that, in contrast with like provisions in Part I (relating to railroads) and Part III (relating to water carriers), there was no provision in section 216 (e) of Part II limiting, or inhibiting, it from including electric railroads in through routes and

joint fares with motor carriers. And this fact, the Commission pointed to, it is apparent, to show that, while, on the one hand, there was no inhibitory language, on the other hand, consideration of the statute and its purposes and policy as a whole, together with the situation of commingled forms of transportation service to which it here had to be applied, afforded every reason for giving to its language a workable construction.

Furthermore, as found by the Commission, through routes between the Transit Company and the Virginia lines were already in effect and through fares by combination were also in effect and in active every day use. And, in such situation, other authority in addition to that respecting the establishment of through routes and joint fares is placed with the Commission by section 216 (e), in that in the fore part thereof it is provided substantially that whenever "the Commission shall be of the opinion that any individual, or joint rate, fare, or charge demanded, charged or collected" by any motor carrier, or carriers, "in conjunction with any common carrier or carriers by railroad and/or express * * * is or will be unjust or unreasonable * * * it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum * * * thereafter to be observed * * *." In the instant case the Commission had before it and found unreasonable

the through fares, by combination, between the Virginia installations and points in the District charged by the Virginia bus lines in conjunction with the Transit Company in its capacity, not only as a motor carrier, but also as a common carrier by street railroad, and it seems evident that under statute's language, the Commission in prescribing the reasonable fares to be thereafter observed, was as much authorized to prescribe joint fares as through fares by combination of separately published fares of the companies concerned. With through routes already in effect between the Virginia lines and the Transit Company as a carrier by railroad, the Commission had ample authority, and, in fact, was required, to prescribe reasonable through fares of some sort to replace those found unreasonable (Cf. *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 667), and no good reason appears why it should not have prescribed joint through fares as it was authorized to do and did do.

Accordingly, even if the Transit Company's street railroad service could be regarded as distinct and separable from its bus service, still the Commission was authorized to make the joint fares which it prescribed apply to the Company's service of the former kind and, when it is considered that the Company's two kinds of service were not in fact separable but were so commingled that the Commission could not practicably exercise its indisputable joint fare authority with

respect to the bus service without also making the fares apply to the street car service, it is clear that the Commission had sound grounds and reason for reading the statute as clothing it with the authority which it exercised. *Wisconsin Commission Case, supra; N. Y. Cent. R. R. v. United States, supra.*

Concerning the joint fares in their application over the through routes as made by the Virginia lines and the bus lines of the Transit Company, there is the difference that the Commission is expressly authorized to establish through routes and joint fares between motor carriers, *if finding the same to be in the public interest.* And here, even though through routes and through fares were in effect, it may well be (Cf. *Virginian Ry. Case, supra,* 667) that a finding of public interest was a prerequisite to the prescription of joint fares. But, as above shown, the Commission made such finding, and, while, in doing so, it did not distinguish between the bus operations and street car operations of the Transit Company, this was because it had found them to be inseparably commingled and, therefore, was treating them as "combined bus-street car operations."

IV. The appellees are wrong in their view that the fares prescribed by the Commission are commutation fares within the meaning of the statute's provision (Sec. 22, Part I, sec. 217 (b), Part II) that "Nothing in this Act shall prevent * * * the issuance of * * * commutation

passenger tickets"; and they are also wrong in their view that the provision precludes the Commission from prescribing commutation fares such as fall within its meaning.

1. Presumably Congress, in dealing with commutation service and tickets, has reference to the commutation service and fares which were developed by the stage coach and railroads and later provided for by the electric roads and motor carriers. In all this time, the Commission says, the term commutation traffic "has been applied generally to suburban and interurban but not to urban transportation, at least not to transportation throughout an urban area." And it also says that "Another historic characteristic of commutation fares is that they apply only to a particular class of traffic." Contrasting the service and fares here involved with such generally recognized commutation service and fares, the Commission points out that it had found that "the transportation here under consideration is essentially urban in character" and, in effect, that the token and weekly pass fares in existing use were not fares for a particular class of traffic only, but were rather the predominant type of fare customarily maintained in the area, the single fare being the exception. Based on these considerations and the fact that the fares prescribed by it were of the same type, the Commission concluded that the latter could not "properly be regarded as commutation fares." That the Commission is

right in this seems evident. While the interstate transportation, over which it alone had authority, happened to be of government employees between their homes and the Virginia installations, the Commission had found, upon ample evidence, that the transportation was properly to be treated as embraced within the District urban area, and the mere fact that it was interstate cannot, in the matter here under consideration, be regarded as distinguishing it from the other like intra-District transportation of government employees and others between their homes and places of daily employment.

2. Even assuming the fares prescribed are commutation fares, the Commission acted within its authority. The thought that the statute precludes the Commission from prescribing commutation fares is based, apparently, upon the theory that, although the Commission may regulate such fares once they have been established by a carrier, it may not impose its judgment on the carrier in the matter of initiating their use. So far as concerns the Transit Company, the type of fares prescribed by the Commission is obviously new only in the sense that they are prescribed for the particular interstate transportation, and it seems unlikely that, with respect to the question of whether the type of fares prescribed does in reality trench on the company's managerial initiative, the statute, in the situation here, takes cognizance of mere State lines. On the other

hand, except for the ticket book of the Alexandria line, the Virginia lines do not have in present use the type of fare prescribed, although such type of fare is, of course, applied to the Transit Company's part of the through transportation, that is, between the homes of the passengers and the District terminals of the Virginia lines. However, entirely aside from the consideration that the type of fare in question is in established use for most of the transportation involved, it is manifest that section 22 does not in terms preclude the Commission from prescribing commutation fares. In fact, its language does not bring to mind the meaning ascribed to it at all, and the fact that it is not intended to preclude the Commission from prescribing commutation fares appears confirmed by the extrinsic consideration pointed to in the Commission's report.

V. The fares prescribed by the Commission are neither confiscatory nor in any way unreasonable but, on the contrary, are fully supported by the evidence as in every respect just and reasonable. While the carriers rely on the charge of confiscation, their bills of complaint do not make compliance with the requirements in respect of particularity of allegations. *Beaumont, S. L. & W. R. Co.* v. *United States,* 282 U. S. 74, 88–89. Moreover, the evidence advanced in support of the allegations plainly fails to meet the tests laid down by this Court. *St. Joseph Stock Yards* v.

United States, 292 U. S. 38. The Transit Company was the only one of the carriers to introduce cost evidence and its exhibit is confined exclusively to the costs and revenue under existing fares of that part of its Pentagon operations consisting of the service performed by its two Pentagon bus lines between their District terminals and the Pentagon building. That is to say, the exhibit makes no cost and revenue showing whatever of the remaining part of the Company's Pentagon operations consisting of the transportation of Pentagon employees between their homes in the District and the said District terminals of its two Pentagon bus lines. This evidence, it is clear, does not meet the tests laid down by the Court. Cf. *Northern Pac. Ry.* v. *North Dakota*, 236 U. S. 585, 604.

Certain cost testimony and cost computations were introduced by witnesses for the Departments. No cost evidence other than its exhibit, however, was introduced by the Transit Company, and, as stated, the other appellee carriers introduced no cost evidence whatsoever.

Concerning the evidential support for the reasonableness of the fares prescribed by the Commission, there was the cost evidence, above referred to, and, to that evidence, the Commission gave due weight (R. 846). In addition the record showed that the carriers had experienced a large increase in traffic during the war emergency al-

though their costs had also increased. Further, there was evidence respecting the "value of the service," that is, that its cost was out of proportion to its value to the employee passengers and more than they should be called upon to bear. And, in particular, there was the consideration that "the usual and accepted basis for passenger fares in urban communities is a group or zone adjustment under which the same fare is charged for a continuous trip between any two points in a zone regardless of how long or how short it may be" (R. 846). These zone fare adjustments have their counterparts in freight rate adjustments, such as the so-called group rates to common markets which frequently "blanket" extensive coal, lumber, agricultural or other producing areas and the intradistrict switching rates maintained at, or around, many large cities, such as the 40-mile Chicago switching district, within which the same charge is made regardless of the commodity and regardless of distance, save that the charge for a three-or-more-line haul is more than that for a two-line haul and the charge for a two-line haul is more than that for a one-line haul. *Illinois Com. Comm.* v. *United States* (*Chicago Switching Case*), 292 U. S. 474. In situations such as in the latter case distance is disregarded in favor of other transportation considerations and those considerations are "within the competence of the Commission" (*idem.*, p. 486).

Similarly in the case of zone fare adjustments, the same fare is charged regardless of distance and, as the Commission's report states, "the important considerations are whether or not the transportation conditions within a given group or zone are such as to justify the observance of a common level of intragroup or intrazone rates or fares and whether the group or zone boundaries have been reasonably drawn." With respect to these considerations the Commission says that it is unable to accept the contention of the carriers that a proper demarcation line for the application of District zone fares is the mere political boundary between the District and Virginia, and it concludes that the Virginia installations just beyond the boundary should reasonably and properly be included within the District area or base zone. This conclusion the Commission supports by full findings of facts and reasons (R. 849, 844), and all amply supported by the evidence of record, including evidence that the average distance traveled by employees at the Pentagon and the Army Annex between their homes in the District and the installations is 6.21 miles, which is considerably less than one-half the maximum distance over which a passenger may travel for one fare within the District (R. 844).

The Transit Company contended in the Court below that what the Commission's order requires is, not the establishing of reasonable fares, but

the extension of its District fares to include its Pentagon operations; that its fares were fixed by the District Commission based on its operations within the District; and, apparently, that for that reason, they did not afford a reliable evidential basis for the fares prescribed by the Commission. It is true that, while the record showed that the Transit Company had experienced a large increase in traffic since its fares were fixed, neither this showing nor other evidence of record furnished a basis for accurate knowledge of whether the Company's fares were, or were not, just at a proper level. Nor did the Company's cost exhibit or any other of its evidence show just what was the contribution to its revenues made by its Pentagon operations. But, in order that the Transit Company's fares in established use be treated by the Commission as having sound probative value in support of the fares it prescribed, it was not necessary that the Commission have accurate knowledge that the former were fixed at just the proper level. *Virginian Railway Case, supra,* 272 U. S. 658, 665. In the latter case (which presents close analogies to the instant case), the Commission's order involved prescribed the same level of rates on coal from certain mines in a mining district as the group rates which were in effect from other mines and, in attacking the order, the Virginian urged that

the existing group rates were not proper standards of reasonableness; that they were competitively depressed rates and made in disregard of all usual transportation considerations. Despite these contentions, the Court considered that it was entirely within the Commission's competence to treat the group rates as having good probative value and, in this connection, it said that "It was shown that a huge coal traffic moves from this territory, under like operating conditions, at the blanket rates which were voluntarily established by the other carriers to serve mines similarly located."

With respect to the fact that the joint fares prescribed by the Commission as maxima reasonable fares for application over the through routes between the Transit Company and the Virginia lines were fixed at a higher level than those prescribed for "one-line-hauls" over the Transit Company's own routes: Clearly the carriers cannot advance such fact as a grievance. The revenue from the fares has to be divided and, as illustrated in the *Chicago Switching Case, supra,* it is common practice in like, or analogous, situations to make a greater charge for "two-or-more-line-hauls" than for "one-line-hauls." Cf. *Georgia Comm.* v. *United States,* 283 U. S. 765, 767.

ARGUMENT

I. The Commission, in finding that the carriers' operations were not exempted from the Act, correctly ascertained and applied the facts, and, in concluding that the application of the Act to such operations was, in any event, necessary to carry out the national transportation policy, it made full and complete findings and gave sound reasons in support

As has been shown in the preliminary statement, the lower court, in enjoining the Commission's order, based its action on the holdings (1) that the transportation involved was exempted by section 203 (b) (8) of the Act and (2) "that the facts found by the Commission do not support its conclusion that its taking of jurisdiction is necessary to the national transportation system." With respect to the first holding the district court said (R. 944):

> As to the first question whether the carriers are in intrastate commerce over the entire length of their lines, practically no additional evidence was introduced before the Commission. This court has already found that the Commission was in error in its conclusion of law upon the facts and it is unnecessary to discuss this question any further.

Concerning the question of the adequacy of the Commission's findings to support its taking of jurisdiction as necessary to carry out the national transportation policy, the court stated that the Commission based its conclusion chiefly

on the finding that the employees of the Pentagon were dissatisfied with the fares charged by the carriers and the importance of the war work carried on at the Pentagon. As to the first ground, the court said that "apart from the fact that the dissatisfaction of the employees with the fares charged is ground for finding that their reduction is necessary to carry out the national transportation policy, there is a mere scintilla of evidence to support this finding." Following this statement, the court discusses certain of the evidence and apparently concludes that it is not substantial. With respect to the second ground, the court said:

> As to the importance of the Pentagon in the prosecution of the War, Congress has not provided that the Commission could take jurisdiction merely because of the importance of transportation to or from a government agency. There must be more than this; it must appear that the war work of the government is materially affected and not merely that a small portion of the workers are dissatisfied with the rates of fare charged by the carriers.

By this latter, it is apparent, as noted in Justice Arnold's dissenting opinion, that the majority opinion proceeds in the view that, as matter of law, no necessity could exist for the assuming of jurisdiction to carry out the national transportation policy, including the meeting of the needs of the national defense, unless and until it is es-

tablished by evidence that the war work of the government is being, or already has been, "materially affected." That this cannot be a sound view of Congress' purpose seems evident, and it seems equally evident that the lower court is wrong in its view of the evidence upon which the Commission acted and that it is, in fact, assuming authority to weigh that evidence.

As noted in the opinion, the Commission's supplemental report, in analyzing the evidence showing the need for assuming jurisdiction (R. 817), refers to the dissatisfaction of the employees at the Virginia installations with the fares charged by the Transit Company and other carriers. The report, in referring to the evidence taken at the original hearing, states substantially that most of the employees at the installations are in a relatively low income group [15] and that the existing fare situation is an element entering into separation from the Government service at those points; [16] that a representative group of employees testified to the prevalent dissatisfaction with the existing fares, [17] which testimony was corrobrorated by a number of personnel supervisors; [18] and, in effect, that a further consideration not to be ignored was the fact that the Secretaries of the War and Navy Depart-

[15] Ex's. 21–22, R. 969–970; Ex. 35–36, 38, R. 981–983.
[16] Ex, 23, R. 970; Ex. 37, R. 982.
[17] R. 367, 369, 371, 372, 373, 375, 376.
[18] R. 377–380; 380–384; 384–386; 386–388; 389–391.

ments themselves considered the matter of the Commission's assuming authority over the fares to be of sufficient importance to be brought to its attention. With respect to the evidence taken at the further hearing, the report reads:

> On further hearing, the Departments adduced evidence which further emphasizes the importance in the conduct of the war of the work performed at the Virginia installations.[19] Offices of the Secretary of War, the Chief of Staff of the Army, and the heads of the services immediately concerned with the conduct of the war are located in the Pentagon and the Army Annex. Important services of the Navy Department similarly concerned are housed in the Navy Annex. In brief, these buildings may be characterized as the nerve center of the war effort in this country.

Following its findings with respect to the evidence, the supplemental report sets forth the declaration of the national transportation policy[20]

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[19] R. 794–800; 800–803.

[20] "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with

and thereafter discusses and applies the same as follows (R. 818):

> Since subdivision 7 (a) of section 203 (b) provides, in effect, that despite the exemption of subdivision (8) of transportation within a "commercial zone" from the provisions of the act, the exemption may be removed whenever we find the same to be "necessary to carry out the national transportation policy," it necessarily follows that the subjecting of such transportation to the act's regulatory provisions, including those with respect to rate or fare regulation, is specially recognized by the act as action that may serve the said national policy, including its specified end of developing, coordinating and preserving a transportation system "adequate to meet the needs of the commerce of the United States * * * and of the national defense." Having this in mind, and read in light of its earlier statements of objectives, including that of encouraging the establishment of reasonable charges for transportation services, it is plain that the "end" specified by the national policy of transportation system adequate to meet the needs of commerce and of the national de-

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the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. * * *"

fense, has reference not only to adequacy of service but also to transportation services rendered at reasonable fares and charges. It is further plain that, in view of the very nature of the transportation which it is contemplated that we may remove from the exemption from regulation in furtherance of the national transportation policy, that we must, in effectuating such policy, necessarily give consideration to the circumstances of individual transportation units and to the needs of their patrons.

It is clear that in order to ensure for the transportation here considered fares that do not exceed a level operating against the full efficiency of the important services performed at the Virginia installations in the conduct of the war, it is essential that the fares be subjected to regulation. As above said, it is considered and has been shown that the existing fares are having an effect detrimental to such services, and there can be no assurance against the charging of excessive fares except by subjecting them to regulation.

No agency other than this Commission is empowered to regulate the fares in issue. It is a well established rule that even where the Federal Government does not occupy the field, the States are without power to regulate charges for interstate transportation. *Minnesota Rate Cases*, 230 U. S. 352, 399–401, and cases there cited.

That the above gives to the national transportion policy, not only a rational, but a sound and

necessary construction and application seems manifest. There is an abundance of evidence that the work done at the Pentagon and other government installations in Virginia is vital to the war effort. The evidence is clear that, so far as concerns most of the employees at those installations, the fares they must pay twice daily for transportation between their homes and places of work are important items in their budgets, and, coupled with this, there is the further showing that dissatisfaction is in fact prevalent among the employees with the existing level of fares. In addition and, perhaps, of most importance, is the showing by testimony and otherwise that high officials of the Army and Navy Departments considered that the Commission's assumption of jurisdiction over the fares paid by the thousands of workers employed at the Virginia installations was necessary to the war effort. It is apparent that, in order to be of that opinion, such officials need not have had before them facts and figures showing that the war effort was being "materially affected", or for that matter have had in mind more than the necessity of maintaining employee morale and efficiency at a high level in order to ensure the best possible war effort at the "national military headquarters." And it is also apparent that the statute in setting the standard of what is "necessary" in order adequately "to meet the needs * * * of the national defense" is aiming, not at a low, but at a high standard of needs.

Furthermore, the lower court's holding that, in order to support the Commission's taking of jurisdiction as so necessary to meet the needs of the national defense, it must appear that the government's war work is materially affected would, as stated by Justice Arnold (R. 947), mean that the Commission "must withhold its hand until real harm has been done to the war effort." But this, in its practical effect and working, is not different from saying that, in order to support the Commission's jurisdiction as necessary to meet the needs of the national defense, the evidence must be such as to show that jurisdiction should have been earlier taken. The national transportation policy, similarly as any other provisions of the Interstate Commerce Act, must be read having in mind that the Commission is clothed with a quasi-legislative authority to project its judgment into the future and, when so read, it is clear that the Commission is authorized and expected to anticipate any such material hampering of the Government's war work. The Commission is not, of course, clothed with authority to reduce fares for the reason simply of their hampering effect on such work or for any reason other than that they are shown to be unreasonable or otherwise unlawful. But it plainly does not have to await evidence of real harm "done to the war effort" before it may take jurisdiction to inquire into the reasonableness of the fares involved.

A. Extent To Which the Carriers Are Engaged in Intrastate Transportation Over the Interstate Routes Involved

With respect to the question of whether the operations of the Transit Company and other carriers are in fact exempted from the Act by section 203 (b) (8), the Commission, in its supplemental report (R. 819), covers more clearly and with considerably more detail than in its original report its reasons, with the supporting facts, for its view that the said carriers are not engaged in intrastate transportation over the entire length of their interstate routes and, therefore, do not fall within the exemption. As a background for this, the Commission says:

> As above shown, the provisions of section 203 (b) (8) exempting commercial zones from regulation do not apply unless "the motor carrier engaged in such transportation of passengers over regular or irregular routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction."
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> * * * * *
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> In order that passenger transportation be intrastate, it may be said that a first, or basic, requirement is that it be physically purely intrastate, that is, transportation of passengers from place to place exclusively within the confines of a single State; it

> might be that, even then, the passengers, or certain of them, were in fact in course of interstate travel, but, in order to make a start with the proposition that the transportation is intrastate, it must, as stated, first meet the basic requirement of being transportation of passengers from place to place exclusively within one State. Cf. *Hanley* v. *Kansas City So. Ry. Co.*, 187 U. S. 617, 620; *B. & O. S. W. R. Co.* v. *Settle*, 260 U. S. 166, 171; *Yohn* v. *United States*, 280 F. 511.

Following the above the Commission details certain of the evidence showing that, so far as concerns the Transit Company, it was not engaged in any intrastate transportation in Virginia, the Commission saying, that at the original hearing the company's president and general manager testified that his company was not engaged in any such intrastate operations; "that, so far as he knew, there was no pick-up or discharge of passengers by the company's Pentagon bus lines outside the District of Columbia other than at the Pentagon Building; that the company had no authority to use the lines for short haul of passengers in Virginia; and that it was its intention to operate between certain points in the District to the Pentagon, conducting 'a through express type of service to serve the War Department Building.'" (R. 187–190.)

This testimony the Commission thereafter confirms by referring to the company's tariffs and

showing that the tariff for its R–2 route contains the rule that "No intrastate passengers accepted" (R. 188) and that the tariff for its Q–2 route contains rules to the effect that passengers are not permitted to board or alight at any points in Virginia except the Pentagon Building (R. 1022). Further confirming the testimony of the company's president and general manager, the Commission quotes from the company's applications for temporary operating authority in which it states that it does not intend to engage in intrastate transportation in Virginia, and also from a letter from the company's president seeking extension of temporary authority in which it is stated, among other things, that the company "has no operating rights for intrastate operations in the State of Virginia from any Virginia authority." (R. 1018.) In concluding with respect to the Transit Company the Commission says:

> In view of the foregoing, it seems to us that the Transit Company is not engaged in any intrastate operations in Virginia, either authorized, or unauthorized, by that State, over its interstate routes between the Pentagon and the District.

With respect to the Virginia lines, the Commission first says (R. 821):

> At the original hearing, officers of the Virginia companies gave testimony concerning the intra-District operations of those companies, from which we concluded,

> as above stated, that the Coach Company performed no intra-District operations and the Alexandria Line and Arlington Line only limited operations. Evidence presented by the Department on further hearing establishes the correctness of these conclusions. This evidence consists of orders of the Public Utilities Commission of the District, which specify the authorized routes and stops.[21]

Following the above, the Commission says that the orders show that the Coach Company is authorized to operate over all four bridges between the District and the Pentagon, but that it is not authorized to perform any intra-District transportation, and the evidence shows that it is not engaged in such transportation (R. 442–443); that, as for the Alexandria Line and the Arlington Line, the orders show that each is authorized to operate over the Memorial and Highway Bridges, but that, so far as concerns their Memorial Bridge routes, they are not authorized to engage in any intra-District operations. In the next paragraph the Commission says that the testimony confirms generally that the actual op-

[21] These orders of the District Commission (R. 1049–1063) constituted important new evidence. While there was testimony at the original hearing respecting the operations within the District of the Alexandria Line and the Arlington Line, it was general and not furnishing the information on which the Commission could have made the clear statement of those operations which was enabled by the new evidence.

erations of these two companies conform to the authority granted them (R. 5; 449–450; 447).

Down to this point, therefore, the Commission's findings show that the Transit Company is not engaged in any intrastate transportation in Virginia, either authorized, or unauthorized; that the Coach Company is not engaged in any intra-District transportation, either authorized or unauthorized; and that the same is true of the Alexandria Line and the Arlington Line so far as concerns their Memorial Bridge routes. This leaves for consideration only the Highway Bridge routes of the two latter lines and, as to those routes, the Commission says that the District Commission's orders show that the said lines

> are also not authorized to engage in such (intra-District) transportation, except between authorized stopping points, one on inbound and one on outbound movements, opposite the Jefferson Memorial, and authorized stops north of Maine Avenue. In other words, the companies are prohibited from engaging in any intra-District transportation in the area north of Maine Avenue. The distance between the intersection of Fourteenth Street and Maine Avenue, S. W., and the terminal of the Alexandria Line at Twelfth Street and Pennsylvania Avenue, N. W., is about 1 mile over the route of that company. The only authorized stops south of Maine Avenue are those opposite the Jefferson Memorial.

The Commission then follows this with the conclusion:

> Accordingly in view of the fact that the Alexandria Line and the Arlington Line are wholly without authority from the Public Utilities Commission of the District of Columbia to engage in intra-District transportation over their Memorial Bridge routes and that, over their Highway Bridge routes, they are without such authority in the area within the District above described, and in view of the further fact that the testimony confirms generally that their actual operation conforms to the authority granted them, we are of the opinion that the said lines are not engaged in intrastate transportation, either authorized, or unauthorized, by the District, over the entire length of their interstate routes herein involved.

It seems plain that, based on the facts therein stated and the wording of the statute, the Commission is correct in its above conclusion that the Alexandria Line and the Arlington Line are not engaged in intrastate transportation over the "entire length" of their interstate routes. The word "entire length" contained in the statute must be given some effect and there seems to be no good reason for not giving to them their usual and ordinary meaning. Judged by the bills of complaint, there appears to be a tendency to consider that, because the interstate trans-

portation here involved is in a sense local, its exemption from federal regulation is a primary aim of the statute instead of an exception to its purpose to provide for regulation of all interstate transportation. But any such view puts out of mind the familiar rule that, since the Interstate Commerce Act, as remedial legislation, should be liberally construed, exemptions from its operation should "by the same token" be strictly read so as not to narrow the Act's remedial processes without clear warrant therefor. *Piedmont & Northern Ry.* v. *Int. Com. Comm.*, 286 U. S. 299, 311.

ISSUES NOT PASSED UPON BY THE LOWER COURT.

The remaining issues involved in this case were not considered and determined by the lower court, but that that fact does not preclude this Court from passing upon them, if it believes such course to be warranted, is shown by a number of decisions, including importantly *United States* v. *N. Y. Cent. R. R.*, 272 U. S. 457, 463–464;[22] *United States* v. *Louisiana*, 290 U. S. 70, 72–73; *Group of Investors* v. *Milwaukee R. Co.*, 318 U. S. 523, 529. The circumstances in this case which it is believed afford special warrant for the Court's passing on the remaining issues are:

[22] In this case, while the lower court set aside the Commission's order on the sole ground that the Commission's jurisdiction had not been authoritatively invoked, this Court, in reversing the lower court, passed upon the remaining issues.

1. That, in addition to the questions of statutory authority above discussed, the bills of complaint raise various other questions with respect to the Commission's statutory authority which, if determined separately by the lower court and against the Commission, could involve several further appeals to this Court and thus bring about a final determination of the case in piecemeal fashion.

2. That a fundamental purpose of the Urgent Deficiencies Act is to expedite the review of the Commission's rate and other orders affecting the nation's transportation service. *United States* v. *Griffin*, 303 U. S. 226, 233; *Chicago Junction Case*, 264 U. S. 258, 270.

3. That the Commission, having determined that the fares involved are excessive, the benefit of that determination should inure to the Government's war effort as soon as possible, if the carriers' various allegations that the Commission exceeded its statutory authority are unfounded.

II. The Commission was not required to refer the matter initially to a Joint Board

The contention is made by the Virginia Corporation Commission, the Coach Company and the Arlington Line that the Commission should have referred the proceeding initially to a joint board pursuant to section 205 (a) of Part II of the Act which, so far as pertinent here, reads as follows:

> (a) The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, permits * * * and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: * * *.

It will be seen from the above that reference to joint boards of "complaints as to rates, fares and charges of motor carriers" is required of the Commission when the operations involve not more than three States. For the purpose of Part II, the term "state" embraces the District of Columbia. Section 203 (a) (8). The operations here are, therefore, between two States and the question is whether the matter was one within the matters described as "complaints as to * * * fares and charges of motor carriers." It is evident, it is believed, that it was not.

In connection with its contention that the Commission proceeding was one instituted on complaint, the bill of the Coach Company (R. 872)

alleges that "at the hearing the Commission announced that the investigation was instituted on complaint of the Secretary of War * * *" and later that "The Commission issued a report and order reciting the complaints." Since the Commission both at the hearing (R. 2) and in its reports (R. 835, 817) stated that the investigation was instituted "at the request of the Secretary of War * * *," the said allegations of the bill serve to emphasize the distinction both in fact and practice between "letters of request" and "complaints"[23] as that word is used in the Act. It will be realized that it is seldom that the Commission institutes an investigation on "its own initiative" in the sense that the matter is one "hit upon" solely by the Commission and without its attention being called to the matter from the "outside." The Commission frequently institutes investigations which as a matter of procedure are

[23] Sec. 204 (c) of Part II of the Act reads:

"(c) Upon complaint in writing to the Commission by any person, State board, organization, or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier or broker has failed to comply with any provision of this part, or with any requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation that the motor carrier or broker has failed to comply with any such provision or requirement, the Commission shall issue an appropriate order to compel the carrier or broker to comply therewith. Whenever the Commission is of opinion that any complaint does not state reasonable grounds for investigation and action on its part, it may dismiss such complaint."

"on its own initiative" although in fact they are investigations which it has been directed to undertake by the Congress, such as the investigations instituted by the Commission under the Hoch-Smith Resolution.[24] Very frequently other of its investigations on its own motion are preceded by letters from shippers, carriers, communities and the like, calling alleged delinquencies or failures of the carriers to its attention. In fact, matters of such sort may be called to the Commission's attention by other Departments of the Government, such as the Departments of Commerce, Agriculture and others; and, if resulting in, or in part responsible for, investigations instituted by the Commission on its own motion, it would not seem that such investigations, could properly be regarded as complaint proceedings in any sense intended by Congress in providing for joint boards.

The letter from the Secretary of War (R. 959, Ex. 11) which first brought the present matter to the Commission's attention was an ordinary letter without any of the characteristics of a complaint.[25]

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[24] In its 1925 Annual Report to Congress, page 38, the Commission, after setting forth the Hoch-Smith Resolution, says: "Pursuant to that resolution we instituted, on March 12, 1925, *upon our own motion*, a general investigation, docketed and entitled No. 17000, *Rate Structure Investigation*."

[25] In fact, this letter did not even meet the requirements of an informal complaint such as prescribed in the Commission's General Rules of Practice. *Cicardi Bros. Fruit & Produce Co.* v. *Atlantic C. L. R. Co.*, 221 I. C. C. 67, 69.

The Commission's present General Rules of Practice are not different than they long have been in their general requirements with respect to formal complaints as, for example, their requirements for correct designation of the defendants and for filing of additional copies for service on the defendants (Rules 26–28). The letter of the Secretary of War, not only had none of the characteristics of a formal complaint, but was not accompanied by additional copies for service. Moreover, the carriers did not demand that the letter of the Secretary of War be treated by the Commission as a formal complaint, although they necessarily were aware of the existence of such letter as a result of the informal negotiations that took place prior to the institution of the investigation. They did not demand that copies be served upon them, nor did they file any formal answer such as contemplated by Rule 35 of the Commission's General Rules of Practice.

But, entirely aside from the fact that the letter of the Secretary of War and its mailing did not meet the tests in respect of complaints laid down by the Commission's rules, it seems apparent that it was intended by the Secretary (and was so treated) as simply asking the Commission to exercise its well known authority to institute an investigation on its own motion.

It must be assumed that Congress is entirely familiar with the manner in which Commission

proceedings arise, both complaint proceedings and those instituted on the Commission's own motion, and that, in providing for joint boards, it did not use the word "complaint" in a vague and indefinite way but intended to give to it its well recognized meaning. While Section 204 (c),[26] quoted in footnote 22, *supra*, provides that the Commission may dismiss a complaint when of the opinion that it does not state reasonable grounds for investigation, this provision is not different in substance from the like provision in section 13 of Part I, which has long been recognized as attaching real right to complaints filed with the Commission. This is shown by the decision in *A., T. & S. F. Ry. Co. et al.* v. *The United States,* 284 U. S. 248, where the Court had before it an order of the Commission requiring a general reduction in grain rates on a record which had been made prior to the severe financial depression of the early 1930's and where the Court, in referring to a petition of the carriers for rehearing in light of the effect on their revenues, held that the change in conditions was such that it amounted to a new economic level and that by reason of that (p. 248):

> The petition was not an ordinary petition for rehearing, but was of the nature of a supplemental bill, presenting a new and radically different situation, which had

[26] See also Section 216 (e).

supervened since the record before the Commission had been closed.

By this recognition of the distinction between the usual petition for rehearing (with respect to which the Commission has broad discretion) and a supplemental bill (i. e., a complaint), it is plain that the Court recognized that there were rights attached to complaints filed with the Commission which placed them in an entirely different category from petitions resting on the Commission's discretion. While the letter of the Secretary of War involved here was not a petition for rehearing, it is equally clear that it was not a complaint or other than a request leaving the Commission with full discretion in determining whether to undertake the proceeding.

With respect to the Commission's practice in connection with rate proceedings instituted under Part II on its own motion, the Commission has regarded such proceedings as distinct from complaint proceedings and has never considered that they were required to be referred to joint boards,[27]

[27] Food Products, Pittsburgh, Pa., to New Jersey, 19 M. C. C. 463; Paper and Paper Articles from Canton, N. C., to Atlanta, Ga., 21 M. C. C. 89; Southwest Freight Lines, Commodities from Coffeyville, Kans., 22 M. C. C. 251; Periodicals, etc., Savannah, Ga., to Alabama and Tennessee, 30 M. C. C. 391; Classes and Commodities from Omaha to South Dakota, 32 M. C. C. 735; Groceries and Store Supplies from Twin Cities to Wisconsin, 33 M. C. C. 597; Milk, Canned, L. T. L., between Baltimore, Md., and York, Pa., 34 M. C. C. 382; Building, Roofing, and Paving Material between Baltimore, Md., and York, Pa., 32 M. C. C. 761.

though it believes it is left to its discretion to do so where there are reasons making such course desirable. And finally it should be said that it is not believed that failure to observe the joint board procedure is a fatal error when in fact the final judgment is rendered by the Commission. Under sections 17 and 205 of the Act, upon the filing of exceptions by any party to the recommended order of a joint board, a proceeding automatically goes to the Commission for disposition. These provisions also authorize the Commission to set aside the recommendation of a joint board whether or not any exceptions are filed thereto. It is, therefore, thought the joint board procedure may properly be characterized as an aid to, not a substitute for, action by the Commission. Therefore if any error was committed, which it seems apparent was not the case, it was merely of a procedural nature and does not affect the merits. See *Rex Oil Co. Contract Carrier Application*, 17 M. C. C. 324; *Lincoln Tunnel Applications*, 12 M. C. C. 184; *Gable Transport Co., Inc. Common Carrier Application*, 19 M. C. C. 527; *Magee Truck Lines, Inc., Common Carrier Application*, 28 M. C. C. 386.

III. The Commission correctly applied the Act with respect to the street electric operations of the Transit Company

Contrary to the allegations of the appellees, the Commission, in prescribing the fares for the trans-

portation here involved, that is, the individual fares over the Transit Company's own routes and the joint fares over the through routes between the Transit Company and the Virginia Lines, acted entirely within its authority in requiring the application of such fares, not only to the Transit Company's motor bus lines, but also to its electric street railroad lines and points in the District reached by the latter lines.

While, as stressed by the appellees, it was held in *Omaha Street Ry.* v. *Int. Com. Comm.*, 230 U. S. 324, that electric street railroads were not included among the railroads to which the Act applied and that, therefore, the Commission was without authority over the fares of a street railroad operating between Omaha, Nebr., and Council Bluffs, Ia., there have been, since that decision, many amendments and additions made to the Act extensively broadening and enlarging the Commission's authority. Entirely aside from the fact that it is shown in the opinion in that case that the decision might have been different if the Commission's order had been made after, instead of before, the 1910 amendment whereby it was provided that the Commission shall not "establish any through route, classification, or rate between street electric passenger railroads not engaged in * * * transporting freight * * * and railroads of a different character", the Commission's authority has, by repeated amendments, been enlarged, not only in respect of carriers by railroad, but also so

that now its regulatory authority is complete over water carriers and, in addition, extends to motor carriers. And, too, the Commission is expected to effect reasonable coordination in the rendering of the several forms of transportation service subject to the Act. In view of these great changes, it seems evident that the decision in the *Omaha Case, supra,* predicated, as it was, on the ground, broadly stated (p. 337) that street railroads did not fall within the Act's objectives,[28] does not fit in with the provisions of the Act as it stands today and, particularly, that it does not fit in with the situation shown here of the Transit Company rendering interstate service in the dual capacity of a carrier by motor bus and a carrier by street railroad.

As indicated above, the question of the Commission's authority over the Transit Company's street electric railroad service, as such, is "tied in" closely with the question of its authority to establish through routes and joint fares between

[28] The decision, in holding that "the word 'railroad' (as used in the Act) cannot be construed to include street railroad," emphasizes that street railroads are not fitted to obey the commands made by the Act upon every railroad subject thereto. But under the Act, as it stands today, it is doubtful that that criterion has like force; for there may be carriers by railroad which are such only in limied respects and as to particular transportation service. *Union Stock Yards Co.* v. *United States*, 308 U. S. 213; and there may be carriers by water which have "hybrid" characteristics. *United States, I. C. C., Seatrain Lines et al.* v. *Pennsylvania R. Co.*, decided January 29, 1945.

the Virginia Bus Lines and the Transit Company in its capacity as a carrier by street railroad. This latter question will be presently separately dealt with but is mentioned here because the Commission, in its report, discusses the two questions together.

At the outset of its discussion (R. 841), the Commission states that its jurisdiction over electric railways was considered by the Court in the *Omaha Case, supra,* and also in *United States* v. *Village of Hubbard,* 266 U. S. 474; and, after mentioning the fact that in the first case it was held that street railways were not comprehended within the meaning of the word "railroad" as used in the Act, it makes the comment (R. 841):

> * * * Our decision had been rendered prior to the amendment of June 18, 1910, which provided that the Commission was not empowered to establish any through route or rate, fare, or charge between street electric passenger railways not engaged in transporting freight and railroads of a different character. This provision is now embodied in section 15 (3) of the Act.

Directly following the above the Commission continues (R. 841–842):

> In the second case above cited the Court held that section 1 of the act conferred general jurisdiction upon us to regulate interurban electric railroads engaged in interstate passenger operations. We had theretofore

exercised such jurisdiction, respecting which the Court said:

"The correctness of the Commission's action in assuming jurisdiction over the interurban roads is confirmed by the action of Congress which, in recent amendments of the Act to Regulate Commerce, limited, in respect to certain subjects, the authority over them."

The Court then proceeded to point out the subjects referred to, in respect of which our jurisdiction had been limited and, among them, was the authority to require the establishment of through routes and joint rates. These limitations are contained in part I of the act. There is a similar limitation in respect of through routes and joint rates in section 307 (d) of part III. The latter part was added to the act in 1940. But there is no similar limitation in section 216 (e) of Part II. Part II was added to the act in 1935.

The Transit Company is not now, although it may have been in the past, a street electric passenger railway in the usual sense of that term. It conducts bus operations throughout the District and in adjacent territory. The total mileage operated by its busses and street cars is about the same. These operations are commingled and blended. A uniform fare applies to both and transfers are interchangeable between street cars and busses. About 62 percent of the gross revenues of this com-

pany is derived from street-car operations and 38 percent from bus transportation.

In view of the circumstances described, effective exercise of the authority expressly conferred upon us to regulate the bus fares necessarily involves some regulation of the Transit Company's street-car fares insofar as they apply to the transportation considered. The situation is analogous to the relation between intrastate and interstate railroad traffic, concerning which the Supreme Court in *Wisconsin Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, said (p. 588):

"Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them."

Accordingly, we hold that we have jurisdiction to require the application of the fares herein found reasonable to the combined bus-street car operations of the Transit Company and to those operations and the bus operations of the Virginia Lines.

Referring first to the Commission's reference, above shown, to the holding in the *Omaha Case* and its comment, that its decision involved in the case had been rendered prior to the amendment of June 18, 1910, respecting its power to establish through routes and rates between street electric railways and railroads of a different character, this comment, it is apparent, shows that

the Commission was familiar with the fact that the Court's opinion in the *Omaha Case* left open the question of the effect of the amendment on its general authority over street railways, but, at the same time, the Commission's later discussion of the *Village of Hubbard Case, supra,* shows that its said comment was more particularly directed to the question, also before it, of its authority to establish through routes and joint fares between the Virginia Bus Lines and the Transit Company as a carrier by street electric railway. For there the Commission, after stating that among the limitations upon its authority to which the Court referred in the latter case [29] was the limitation upon its authority to establish through routes and joint rates, says, in effect, that while such limita-

[29] In the *Village of Hubbard Case, supra* (which held that the Commission was shown to have general authority over the interurban electrics by the fact that Congress in recent amendments had limited its authority over them in certain respects only), the Court refers in the text to the provision in the Act of June 18, 1910, that "the Commission shall not * * * establish any through route, classification, or rate between street electric passenger railways * * * and railroads of a different character." In footnotes, the opinion refers to the several 1920 amendments whereby street, suburban and interurban electric railways are exempted from particular authority of the Commission. Taking the fact that the 1910 amendments (Sec. 15 (3), I. C. Act) speaks of street electric railways and was involved in the *Omaha Case* together with the fact that the 1920 exemptions include street railways as well as interurbans, it is manifest that the Commission, in referring to the "limitations" upon its authority, was speaking of them in their operation with respect to street railways, or in their full operation, including street railways.

tion was contained in Part I of the Act (Section 15 (3)) and there was a like limitation in Part III (relating to water carriers), there was no similar limitation in Part II (relating to motor carriers). The limitations referred to will be discussed under the next title, but it will be noted (R. 842) that, immediately succeeding its reference thereto, the Commission follows with its statement that the Transit Company is not now a street electric passenger railway in the usual sense and also that all that it thereafter says as to the effect of the commingling and blending of the Company's motor bus service with its street railway service relates, not only to the question of its authority over the Transit Company's street railway service as such, but also to the question of whether, in prescribing joint fares between the Virginia Bus Lines and the Transit Company, it might deal with the latter's operations as "combined bus-street car operations."

Giving consideration to the paragraph in which the Commission states that the Transit Company is not now, although it may have been in the past, a street electric railway in the usual sense of that term: That fact is manifest and also the fact that, by reason thereof, it is no longer a carrier of the kind to which the holding, as made in the *Omaha case, supra,* applies. The Company is no longer undertaking to render even its intra-District service as a purely street railroad service,

but "throughout the District" is relying as much on its motor bus operations as on its street car operations to enable it to fulfill its common carrier obligations. As in effect said by the Commission, while its jurisdiction over the company's motor bus operations is not open to question, those operations are for all practical purposes of rate, or fare, regulation inseparably commingled with the Company's street car operations. Pursuing this further, the Commission continues:

> In view of the circumstances described, effective exercise of the authority expressly conferred upon us to regulate the bus fares necessarily involves some regulation of the Transit Company's streetcar fares insofar as they apply to the transportation considered. The situation is analogous to the relation between intrastate and interstate railroad traffic, concerning which the Supreme Court in *Wisconsin Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, said (p. 588):
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> "Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them."

The appellees argued in the court below that the Commission's reference to the *Wisconsin Case* is inapposite here because, in that case, the Commission in any event had the express authority (sec. 13 (3) and (4)) which it exercised, but this

is to urge that the above reasoning of the Court was without purpose. And the said argument also assumes both that the carrier here involved is of the same kind as the Court had before it in the *Omaha Case, supra,* and that the statute remains unchanged. Moreover, the Court has in cases other than the *Wisconsin Case, supra,* pointed to the effect on the construction to be given the statute that necessarily results from a commingling of operations so inseparable that the authority which the Commission plainly has over certain of the operations can only be effectively exerted by exercise of authority over the remainder.

The Commission's order involved in *United States* v. *N. Y. Cent. R. R.* (*supra*), 272 U. S. 457, required the appellee to provide switching service at the public terminal of a barge canal, such service being incidental to the moving of carload traffic between the terminal and points on the appellee's lines and the lines of its connecting railroads. One of the grounds asserted as rendering the order invalid was that the authority which the Commission possessed to require the appellee to undertake the service was limited to interstate transportation while its order required the rendering of such service both with respect to interstate and intrastate commerce. In answer to this the Court said: (p. 464)

> The Commission having jurisdiction over the carriers and the facilities by which the

transportation is carried on, the question is narrowed to whether its jurisdiction extends to the entire current of commerce flowing through this terminal although intrastate in part. When we consider the nature and extent of the commingling of interstate and intrastate commerce, and the difficulty of segregating the freight passing through the terminal, we think it clear that Congress in employing such broad language as "the Commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated" intended to confer upon the commission power to regulate the entire stream of commerce. Where, as here, interstate and intrastate transactions are interwoven, the regulation of the latter is so incidental to and inseparable from the regulation of the former as properly to be deemed included in the authority over interstate commerce conferred by statute. This was the view of the state court. (Citing cases.) An interpretation of the statute which would in practice require the segregation of all shipments in interstate commerce would make compliance with the commission's orders impossible and defeat the purpose of the Act.

In connection with the above case, it should be had in mind that, in contrast with the situation there, the Commission's order in the present case in no way trenches on State (District of Columbia) authority. If ever there was a situation of

interrupted interstate transportation where, although one "leg" of the journey was interstate, the other "leg" was intrastate, and yet the whole plainly and indisputably constituted interstate transportation, it is demonstrated by the situation that existed here of thousands of persons travelling twice every day between their homes in the District and their daily work at the installations in Virginia. That the Commission's authority attaches to the purely bus fares applying to this stream of interstate transportation is clear, and it seems equally clear that the commingling of bus and street railroad transportation is such as to require a conclusion that the Commission is possessed of authority over the street car, as well as the bus, fares, if the Act's language may be reasonably said to warrant that conclusion. And, with respect to that question, it will have been noted that the decision in the *Omaha Case, supra* (230 U. S. 324) makes plain that, even at the time of its rendering, the Commission's authority in terms extended unqualifiedly to common carriers by railroad and that it was only by virtue of construction (p. 327) that it was decided that it did not extend to street railroads.

Furthermore, as already mentioned, although it was held in the *Omaha case* that street railroads were not included among the railroads to which the Act applied, any application that the holding might have subsequent to the 1910 amendments was left uncertain. Near the close of the Court's

opinion (p. 338) it is shown that counsel for the Government made the contention that the amendment of June 18, 1910,

> * * * shows that Congress considered that street railroads were under the jurisdiction of the Commission inasmuch as it then provided that "the Commission shall not establish any through route, classification or rate between street electric passenger railways not engaged in * * * transporting freight * * * and railroads of a different character."

Answering this contention after mention of counter contentions of opposing counsel, the Court's opinion reads in part:

> This section of the Act of 1910, however, having been passed after the order was made by the Commission, Nov. 27, 1909, is not before us for construction and, manifestly, cannot be given a retrospective operation, though the Government insists that it should be given a prospective operation and in its brief contends that "even if the Commission's order was without lawful authority at the time it was made (Nov. 27, 1909) the amendment of 1910 either ratified it altogether, or, at least, validated it for the future," * * *. There was no such stipulation here, and there being nothing to show that Congress attempted an express ratification, and it being open whether the amendment was intended to confer a jurisdiction not previously given, the motion of

the Government to make the order of November 27, 1909, effective from June 18, 1910, cannot prevail.

In short, the above quotation from the *Omaha Case, supra,* together with the *Village of Hubbard Case, supra,* show that, in Part I of the Act, the Commission has a statute to carry out, which while declaring that its provisions apply to common carriers of passengers or property by railroad, excepts electric roads, whether street, suburban or interurban,[30] from only a few of those provisions. The significance of this is shown in the above opinion of the Court relating to street railroads. And, in the *Village of Hubbard Case,* 266 U. S. 474, such exemptions of interurban railroads are said to confirm the Commission's authority over them in other respects. The Court was not called upon to say whether the same exemptions of the street and suburban railroads had like operation and effect, since these were not in issue, but it is difficult to reach any conclusion other than that the opinion leaves open to be gathered from its reasoning that such was in fact the case. For example, while the Court (p. 478) makes mention of the decision in the *Omaha Case, supra,* this mention simply refers to the decision as suggesting a distinction between interurban railroads and urban or suburban street railroads. It does not

[30] The *Village of Hubbard Case*, 266 U. S., at p. 480, sets out in a footnote these exemptions of street, suburban and interurban electric railroads.

refer to the decision as one now applying and, of course, the decision itself leaves open the question of the effect of the 1910 amendment, excepting street passenger railroads from particular authority of the Commission only. The 1920 Act expressly provided for other like exceptions of street, suburban and interurban railroads, and, by virtue of the Court's reasoning with respect to the interurban roads (alone in issue in the case) the conclusion seems inescapable that such exceptions from particular Commission authority, applying equally to street and suburban railroads, shows Congress' intention to include them in the Commission's authority in other respects.

It is true that since the *Omaha Case, supra*; the Commission had not asserted such authority, but the Commission's failure in this respect, it is manifest, has not changed the Act. *Union Stock Yard Co.* v. *United States,* 308 U. S. 213, 224. Moreover, the comparatively recent amendments extensively enlarging the Commission's authority over transportation, including those placing with it authority over motor carriers, cannot be put out of mind in any consideration of the situation disclosed in this case. As emphasized by the Commission, the motor bus operations of the Transit Company, over which it has clear authority, are so inseparably commingled and blended with the Company's street railroad operations in the rendering of the interstate transportation between points in (and throughout) the District

and the Pentagon building that it cannot effectively exert authority over the Company's bus operations without also exercising authority over its street railroad operations. And certainly, even aside from the effect of the 1920 amendments above discussed, this situation, coupled with the consideration that the Act, in its terms, gives the Commission authority over common carriers of passengers by railroad, supply, in and of themselves, not only reasonable, but most compelling, warrant for reading the Act as vesting the Commission with the authority which it exercised. *Wisconsin Railroad Commission Case, supra; New York Central Barge Canal Case, supra.*

A. The Commission acted within its authority in prescribing joint fares between the Virginia Lines and the Transit Company

It should be kept in mind in connection with the appellee's allegations that the Commission exceeded its authority in requiring the establishment of through routes and joint fares that this narrows down to a question of such authority as between the Virginia Lines and the street electric lines of the Transit Company. The routes of the Transit Company itself between points in the District and the Pentagon Building are not "through" in the sense of the Act of a through route between separate carriers and the fares which that company is required to establish over such routes are not, of course, joint fares; and

the Commission's authority to prescribe joint fares between the Virginia Lines and the bus lines of the Transit Company seems beyond dispute. Therefore, the question is, as stated, the narrow one of whether the Commission, while having full authority to prescribe the joint fares between the Virginia Lines and the Transit Company to points in the District which are served by that Company's bus lines, nevertheless, is without authority to require that such fares be established with respect to passengers having to use its street car lines to reach their homes. In its original report (R. 850) the Commission makes the finding that

> Section 216 (e)[31] of the Act authorizes us to require the establishment of through

[31] Sec. 216 (e) reads, so far as pertinent here:

"* * * Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle * * * in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, * * * is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge * * * thereafter to be observed, * * * and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative, without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: * * *"

routes and joint fares whenever deemed by us to be necessary or desirable in the public interest. Through routes are now in effect, and we find that joint fares on this traffic interchanged between the Transit Company and the Virginia Lines are necessary and desirable in the public interest.

Section 216 (e) is set forth in the footnote below and it will be seen that, so far as it deals with the establishment (initially) of through routes and joint fares, it speaks only of motor carriers. However, it has been shown under the preceding title that the Commission's findings that the Transit Company was no longer a street electric railway in the usual sense because of its commingled street car and bus operations and its other findings in support of its general authority over the fares for the street car part of the Transit Company's operations are also directed to the support of its authority to prescribe joint fares between the Virginia Bus Lines and the Transit Company in respect of the latter's street car, as well as its motor bus, operations within the District. And it has also been shown that in connection with those findings the Commission makes special reference to its through route and joint fare authority over motor carriers under section 216 (e), pointing out that, unlike the similar provisions in Parts I and III of the Act, it contains nothing expressly inhibiting it from establishing

through routes and joint fares between motor carriers and street electric railways.

In short, the Commission, after first pointing out that there was nothing in section 216 (e) expressly inhibiting it from establishing through routes and joint fares between motor carriers and street electric railways, then in effect further points out that, in any event, the Transit Company was no longer a purely street electric railway, but in fulfilling its same carrier obligations rendered a motor bus, as well as a street car service, these operations being commingled and blended and the Company's uniform fare applying to both with transfers interchangeable without distinction as between motor busses and street cars. Predicated upon all these considerations, facts, and circumstances, the Commission concluded (R. 842) that it had authority "to require the application of the fares (including the joint fares) herein found reasonable to the *combined bus-street-car operations* of the Transit Company, and to *those operations* and the bus operations of the Virginia lines." (Italics supplied.)

Furthermore, there is more to section 216 (e) than its provision authorizing the Commission to establish through routes and joint fares between motor carriers, and the Commission's further findings, shown above, that "through routes are now in effect" calls for consideration particularly of the earlier provisions of section 216 (e)

(footnote 30, *supra*) giving the Commission express authority over the individual or joint fares charged or collected by a motor carrier, or carriers, in conjunction with any carrier by railroad, by express or by water for transportation in interstate commerce and expressly empowering it, if finding them unreasonable, unjustly discriminatory, etc., to determine and prescribe the lawful fares to be thereafter observed. With through routes already voluntarily in effect between the Virginia Bus Lines and the Transit Company in its capacity of "combined" motor bus and street railroad operator, there was obviously no occasion for the Commission to establish them, and, as for the fares which were also already in effect over the through routes, while they were not joint but were through fares by combination of the individual, or so-called "local", fares, nevertheless, the statute authorized the Commission, if finding them unreasonable or otherwise unlawful, to determine and prescribe the lawful fares to be thereafter observed, including, so far as the language is concerned, joint through fares quite as much as through fares by combination of locals or proportionals. While joint fares contemplate that through routes exist between the carriers this is met by the Commission's finding that through routes are in effect. And, in any event, it seems evident that the language

of the statute authorizes both an order of the Commission prescribing joint fares[32] and one prescribing the same level of fares but leaving it to the carriers to establish through fares by combination either of local or of proportional fares. With any of such kinds of fares in effect the car-

[32] The carriers are assured of equitable divisions of joint fares since the Commission is given the authority to determine and prescribe reasonable divisions in cases of joint fares between motor carriers and carriers of other kind. Sec. 216 (f). As for the Transit Company's right as a railroad not to be "short-hauled" provided for by section 15 (4) of Part I: While the Pentagon bus line of that company is competitive with the Virginia bus lines, section 15 (4) does not protect it from "short-hauling" by motor carriers and Part II contains no provision whatsoever in respect of "short-hauling." It is true that in the case of through routes and joint rates between motor carriers for the transportation of freight, the Commission permits such carriers to cancel the joint rates and close the routes and that it does this on the ground that, since the Act, in contrast with passenger transportation, places no duty on motor carriers to establish through routes for transportation of freight, they should be allowed to close those that may from time to time be established. However, the Commission does not consider that the closing of a through route takes place simply upn the cancelling of joint rates leaving higher combination rates in effect. It does not permit of the cancelling of joint rates except as it is shown that the combination rates left in effect are just and reasonable (*Rocky Mt. Lines, Inc.*, 31 M. C. C. 320), or upon the establishing of proportionals equalling the amount of the joint rates (*idem.*, I. & S. M-2370, *Rayons Between Trunk Line & New England Territory*), or unless the carriers make satisfying showing that the through routes are closed, say, by provision in their tariffs to that effect. *Planters Nut & Chocolate Co. Case*, 31 M. C. C. 719, 721; Cf. *Beaman Elevator Co. Case*, 155 I. C. C., at p. 317.

riers would have to observe them until authorized to do otherwise.

The above is referred to principally having in mind the joint fares prescribed by the Commission in their application to the Transit Company's street car service, that is, in the view and on the assumption that such service must, for purposes of the statute, be regarded as distinct and separate from its motor bus service. With through routes already voluntarily in effect between the Virginia Lines and the Transit Company's street car lines and with through fares by combination in effect and active use over the through routes, it is clear that the Commission, having found such existing through fares unreasonable, had ample authority to prescribe through fares of some sort to replace them (Cf. *Virginian Ry.* v. *United States,* 272 U. S. 658, 667), and, too, at the precise level found reasonable and prescribed by it in the form of joint fares. True the Commission's authority under section 216 (e) to *establish* through routes and joint fares is limited to motor carriers but, in the circumstances here of through routes and through fares *already in effect* and active use between motor carriers and a carrier of different kind, section 216 (e) vests the Commission with other express authority—the authority, if it finds the existing fares to be unreasonable, to determine and prescribe the lawful fares to be thereafter observed. There is nothing here that confines the Commission to the prescription

of through fares by combination and, in fact, the authority to prescribe joint fares is clearly given (Cf. *River Terms. Corp. Class and Commodity Rates*, 14 M. C. C. 542, 549) and no good reason appears why it should not have been exercised. Footnote 30, *supra*.

Accordingly, even assuming that the Transit Company's street car service should be regarded as distinct and separable from its motor bus service, still it was entirely within the Commission's authority to make the joint fares which it prescribed apply to the Company's service of the former kind. However, as vividly pictured by the Commission's findings the two kinds of service utilized by the Transit Company are not in fact distinct and separable but are so "commingled and blended" by the Company in meeting its carrier obligations in the District that exercise by the Commission of its indisputable joint fare authority with respect to the Company's bus service necessitated exercise also of like authority over its street car service. And this fact affords compelling reason for reading the statute as vesting the Commission with such authority even if it were not an authority in any event clearly placed with the Commission. *Wisconsin Railroad Commission Case, supra; New York Central Barge Canal Case, supra; United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 119, 121; *Wickard* v. *Filburn*, 317 U. S. 111, 118.

Concerning the joint fares in their application over the through routes as made by the Virginia Lines and the bus lines of the Transit Company, there is the difference that the Commission is expressly authorized to establish through routes and joint fares between motor carriers, *if finding the same to be in the public interest.* And here, even though through routes and through fares are in effect, it may well be (Cf. *Virginian Ry.* v. *United States,* 272 U. S. 658, 666) that a finding of the public interest is contemplated by the statute. But, as will have been noted, the Commission does make such finding. In making the finding, the Commission does not distinguish between the bus lines and electric lines of the Transit Company, but this is because of its conclusion, above shown, that it had authority to require application of the joint fares to the "combined bus-street-car operations" of the Transit Company and the bus operations of the Virginia Lines.

The appellees contended in the court below that the Commission's finding that through routes were in effect between the Virginia Lines and the Transit Company, was incorrect but it is difficult to believe that the contention was seriously advanced. The question of whether such through routes were open and in effect is, it will be seen, intimately related to the question, above referred to, of whether the persons employed at the Virginia installations and travelling twice daily between those points and their homes in the District

over the Virginia Lines and the District lines of the Transit Company were moving in continuous interstate travel. And, as there said, if ever there was a situation of interrupted transportation where, although one "leg" of the journey was physically interstate, the other "leg" was physically intrastate, and yet the whole indisputably constituted interstate transportation (*B. & O. R. Co.* v. *United States,* 24 F. Supp. 734; *B. & O. S. W. R. Co.* v. *Settle,* 260 U. S. 166), it is demonstrated by the situation that existed here of thousands of passengers transported twice every day between their homes in the District and their daily work at the installations in Virginia. The interruptions consisted of little more than the change from one vehicle to another, and certainly there can be no dispute as to the continuing intention of the passengers to make the journey through to the place of their daily work. And the same facts and circumstances, well known to the carriers concerned (R. 839, 840) in accepting the daily stream of traffic, makes manifest that through routes for the accommodation of the traffic were, as found by the Commission, already in effect.[33] *Sprout* v. *South Bend,* 277 U. S. 163.

[33] Even though it may be that the intent of a passenger to travel interstate is not as reliable a criterion as that of a shipper in respect of freight (*Virginia Stage Lines, Inc.*, 15 M. C. C. 519, 522), the knowledge of the carriers is a different "thing" (*idem*), and where, as here, the carriers' passengers are (in thousands) being daily transported interstate be-

With respect to the latter question, the existence of through routes does not, of course, have to be shown by express arrangement, but may be implied. *St. Louis S. W. Ry.* v. *United States*, 245 U. S. 138, 139. Even with respect to through routes for freight traffic, a single shipment moving on a through billing recognized by the car-

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tween their homes in the District and their places of work in Virginia, it is manifest that the carriers cannot escape either knowledge thereof or interstate regulation of the entire continuing transportation between homes and daily work. Certainly, whatever may be said as to intent, the fact of continuing interstate transportation in such huge volume (R. 839, 844, 845) is good evidence. And, if this needs the support of precedent, it is shown in Commission reports. In *Garden State Line — Purchase — Adolph Hollander*, 25 M. C. C. 243, 244, the Commission, in holding that the vendor was not an interstate motor carrier, based its decision in part on the fact that it had no arrangements for sale of through tickets or for interchange of traffic, but it also said:

"Nor does it appear from the record that *any of the passengers* transported by him commenced their journey at or were destined to points outside New Jersey." (Emphasis supplied.)

And in No. MC–F–2296, *Gulf, M. & O. R. Co.—Control; Gulf Transp. Co.—Purchase—Jesse R. Lamberth*, decided April 25, 1944 (not printed in reports), the Commission said with respect to the interstate status of the vendor:

"* * * While vendor has made no special effort to develop interline business and does not sell tickets beyond his own line, it is clear that he has transported passengers to York and that, at the latter point, such passengers have used services of other motorbus companies in travelling to points outside of Alabama. Likewise, the evidence is convincing that persons from York have used his services to Mobile and then have travelled via other bus lines to such Gulf Coast points as Pensacola, Fla., and Gulfport and Pascagoula, Miss. * * *"

riers is generally regarded as conclusive evidence of the existence of the through routes. *Brownyard* v. *Union Pac. R. Co.*, 148 I. C. C. 444; *Beaman Elevator Co. Case, supra*, p. 315. With respect to passenger traffic there is not the same need, as in the case of inanimate freight, for carrier documents and records relating to through transportation. Joint fares and through tickets constitute, of course, conclusive showing of the existence of through routes for passenger travel. But it is obvious that, without such specific arrangements therefor, through routes may exist and be open at the combination rates or fares; and the Commission considers that, because of the statute's mandate that the rates for any transportation—any traffic in fact moving—shall be just and reasonable (Cf. *Atchison, T. & S. F. Ry.* v. *United States*, 279 U. S. 768, 776), the carriers should be held to a high degree of care in the matter of through routes and, where the prospects are that traffic is moving thereover should either take steps to definitely close the routes or make certain that the combinations of locals are not excessive for the through transportation. *Rocky Mt. Lines, Inc., supra*, p. 321.

It is true that the fifteen thousand or more employees at the Pentagon building who travel twice daily between their homes in the District and the Pentagon (R. 839–840) must, when using routes via Transit Company Lines and the Virginia Lines, pay higher fares than when using the com-

petitive routes available over the Transit Company's lines alone, but, even if such higher fares effected a so-called "commercial" closing of the through routes, that would not be the equivalent of a legal closing (*Virginia Ry. Case, supra,* p. 666; *Atchison, T. & S. F. Ry. Case, supra,* pp. 774, 776; *Beaman Elevator Co. Case, supra,* 155 I. C. C., at p. 315) and here the showing is that, despite the higher fares, several thousand of the said employees do in fact use the former routes daily (R. 840). In view of the fact that, as above said, the through billing on a single shipment of freight, recognized by the carriers concerned, is generally regarded as conclusive evidence of the existence of a through route, the said showing made here would appear to be ample to establish the through routes both as actually and legally open through routes.

The decision in *United States* v. *Munson S. S. Line,* 283 U. S. 45, relied on by appellees, is not applicable here. It involved the question of "a common arrangement" between a water carrier and rail carrier within the meaning of the statutory provisions of section 1 of the Act. The evidence respecting through routes under sections 15 (3) and (4) and 216 (e) has been largely a matter of rulings of the Commission, although, as shown above, for the most part either based on decisions of this Court or referred to with approval. Moreover, in the matter of through

routes between railroads, there is the consideration, not present here (*Crown Coach Co.* v. *Mo.-Ark. Coach Lines*, 27 M. C. C. 746, 748), that the carrier's statutory right to its "long-haul" is generally involved. *Atchison, T. & S. F. Ry. Case, supra; Virginian Ry. Case, supra.*

IV. The appellees are wrong both in their contention that the fares prescribed by the Commission are commutation fares and in their contention that the Commission is without authority to prescribe commutation fares.

The appellees contended in the lower court that the fares prescribed by the Commission were commutation fares and that the Commission was not empowered to prescribe fares of such kind. This was a contention not reached and passed upon by the lower court and the Commission, not having dealt in its original report with the questions involved, discusses them at some length in its supplemental report (R. 823), showing that the fares prescribed by its order are not commutation fares and also that it, in any event, had full authority to prescribe commutation fares.

As stated in the report, section 22 of Part I, relating to commutation fares, is made applicable to motor carrier by section 217 (b) of Part II, and, while in the original Act of 1887, it read: "That nothing in this Act shall apply to * * * the issuance of * * * commutation tickets * * *," it was subsequently amended to read: "That nothing in this Part shall prevent * * *

the issuance of * * * commutation passenger tickets." The Commission points out that statements in decisions rendered by it before the amendment, and also in decisions rendered prior to the time that it was given any authority whatsoever over rates or charges for the future, which statements have been inadvertently repeated or paraphrased in reports of recent years, may account in considerable measure for the thought that it is without authority to prescribe commutation fares.

The Commission, in its report, first explains why the fares prescribed by its order may not properly be regarded as commutation fares and, in this connection, points out that commutation service was recognized as long ago as the day of the stage coach; that it was adopted and further developed by the railroads; and that, subsequently, the electric railways and, following them, the motorbusses, provided communication service and fares. In all this time, the Commission says (R. 823):

> * * * it appears that a usual characteristic of what was understood to be commutation traffic was transportation *between* separate communities as distinguished from transportation *within* a single community. In other words, the term has been applied generally to suburban and interurban but not to urban transportation, at least not to transportation throughout an urban area.

> We have held that the transportation hereunder consideration is essentially urban in character. Another historic characteristic of commutation fares is that they apply only to a particular class of traffic. Accordingly, we are of the opinion that the prescribed fares cannot properly be regarded as commutation fares. They are, rather, the predominant type of fare regularly and customarily maintained by respondents for transportation over their lines in this area, the single fare being the exception.

That the Commission is right in this seems hardly open to question. Certainly, the Commission, in prescribing for the interstate urban service from and to points throughout the District to and from the Virginia installations just beyond the boundary the same type of fares that was in established use throughout the general urban area, acted rationally, and certainly the token and "pass" fares which were in such general established use were and are the predominant type of fares regularly and customarily maintained, the single fare being the exception. Such fares are not "special rates" or fares. Nor do they apply only to a special service or particular class of traffic. They are, as stated by the Commission, the predominant type, or kind, of fares regularly and customarily maintained in the area. And clearly the carriers' patrons—the users of such type of fares—do not bring to mind the class of

passengers commonly known as commuters. *Int. Com. Comm.* v. *B. & O. Railroad,* 145 U. S. 263, 277–278; *Commutation Rate Case,* 21 I. C. C. 428, 430, 433, et seq.

As above said, the token and "pass" fares in established use in the general urban area are not "special rates" or fares. Nor do they apply only to a special service or particular class of traffic. While the interstate transportation, over which the Commission alone has authority, happens to be of government employees between their homes in the District and the Virginia installations, the Commission found, upon ample evidence, that the transportation was properly to be treated as embraced with the District Urban area, and the mere fact that it was interstate cannot, in the matter here under consideration, be advanced as reason for isolating it from the surrounding intra-District transportation or for purpose of making it appear to stand out as a particular class of traffic moving under "special rates."

Furthermore, even assuming *arguendo* that the urban fares in question are properly to be regarded as of special commutation type, or kind, the Commission is clearly right in its holding that it had authority to prescribe such type of fares. The thought that the Commission may not prescribe commutation fares is based, apparently, on the theory that, although the Commission may regulate such fares once they have been established by a carrier (and this it does whenever oc-

casion therefor arises), it may not impose its judgment on the carrier in the matter of initiating their use. So far as concerns the Transit Company, the type of fares prescribed by the Commission is the carriers' own type of fares maintained throughout the urban area, and, therefore, the Commission's action did not require of that carrier the adoption of a type of fare which in reality was new to it. It was new in the sense only that it was required for the interstate service involved, and which the Commission had found [34] to be essentially of the same urban character. Even if it could be said that section 22 leaves wholly to the managerial discretion of a carrier whether in the first instance to establish commutation fares, still it may be doubted whether in this respect and matter the statute takes cognizance of mere State lines.

On the other hand, except for the ticket book of the Alexandria Line (R. 839), the Virginia Lines do not have in present use the type of fare prescribed, although such type of fare is, of course, applied to the Transit Company's part of the through transportation, that is, between the homes of the passengers and the District terminals of the Virginia Lines. However, en-

[34] Such a finding is commonly administratively factual and would seem to be part of the administrative functions in connection with zone or group fares or rates. Cf. *Illinois Com. Comm. et al.* v. *United States, & I. C. C.*, 292 U. S. 474, 486.

tirely aside from the consideration that the type of fare in quesction is in established use for most of the transportation involved, it is evident that Section 22's language, that nothing in this Act shall prevent the issuance of commutation ticket, does not in terms forbid the Commision from prescribing commutation fares as an initial matter. In fact it does not bring to mind the meaning ascribed to it at all, and the fact that it is not intended to preclude the Commission from prescribing commutation fares appears confirmed by the extrinsic considerations pointed to in the Commission's report. As stated in *Commutation Fares to and from Washington, D. C.*, 33 I. C. C. 428 (cited in the Commission's present report):

> In fixing reasonable fares for this particular commutation traffic elements other than cost which determine reasonableness must not be glossed over. Value of the service to the habitual traveler, if often vaguely conceived, is nonetheless a real factor; and fares tending to put the use of the railroadls beyond the reach of the average commuter of a particular region or which might tend to compel on a large scale changes of residence, or which tend to disrupt the community life of those dependent upon this service, must be viewed in the light of the carrier's obligation as a common carrier designed for community service.

Furthermore, as shown in the *Commutation Rate Case, supra,* pp. 439–431, the benefits resulting from the maintaining of commutation fares are by no means one-sided, but, on the contrary, the establishment thereof by the carriers is generally followed by increased patronage and revenue.

V. The Commission's order prescribing the reasonable fares to be observed by the carriers is not confiscatory nor in any way unreasonable, but, on the contrary, is fully supported by the evidence as in every respect just and reasonable

The appellees' contentions as to the level of the fares prescribed, while alleging confiscation as well as absence of supporting evidence are in both respects bottomed on much the same assertions. The Transit Company apparently places more reliance than the other carriers on the charge of confiscation. Its allegations of confiscation (R. 830), however, clearly do not make compliance with the prescribed requirements in respect of particularity. *Aetna Insurance Co.* v. *Hyde,* 275 U. S. 440, 447–448; *Beaumont, Sour Lake & W. R. Co.* v. *United States,* 282 U. S. 74, 88–89. Moreover, the evidence advanced in support of the allegations plainly fails to meet the tests laid down by this Court. *St. Joseph Stock Yards Co.* v. *U. S.,* 292 U. S. 38; *B. & O. R. R.* v. *United States,* 298 U. S. 349, 380. As stated in the first case:

> The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established.

And, as said by the Court in the second case:

> It is very difficult to attain the high degree of certainty in respect of this vital factor (costs) that is obviously necessary to make dependable proof.

What is involved in the present case is the fares prescribed by the Commission for the Transit Company's Pentagon operations. Those operations, however, include, not only the Company's operation of its Pentagon bus lines, but also the service rendered between the District terminals of those lines and the homes of the passengers on other of its lines in the District. Accordingly, the Transit Company's charges of confiscation could not be supported by cost evidence with respect to a part of the operations alone, namely, that part consisting solely of its Pentagon bus lines operation. Such charges could at best be proven by proffer of evidence, taking into account the entire operations and traffic to which the fares applied. As said by this Court in *Northern Pacific Ry* v. *North Dakota*, 236 U. S. 585, 604:

> * * * where it is established that a commodity or a class of traffic, has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service *after taking into account the entire traffic to which the rate applies,* it must be concluded that the State has exceeded its authority. [Italics supplied.]

The Transit Company is the only one of the complaining carriers which introduced cost evidence, and its evidence (Ex. 89, R. 1022, 338 et seq.) is confined exclusively to the costs and revenue yield of that part of the Company's Pentagon operations attributable to the service rendered by its two Pentagon bus lines between their District terminals and the Pentagon building. This evidence was of operations for the first seven months of 1943 and purported to show that the costs exceeded the revenue yield under the existing 5-cent fare, such purported cost showing being 5.39 cents per passenger. This figure was contradicted by a cost study introduced by an expert witness for the Departments which showed a cost for the same period of only 3.57 cents per passenger. (Ex. 101, R. 1040, 634, et seq.). And, in addition, another witness for the Departments introduced an exhibit (Ex. 103, R. 1042, 639, et

seq.) which indicated a profit of $76,807 [35] for the same seven months' period of operations. Speaking of this, the Commission says (R. 845):

> The difference between the revenues as shown by the Transit Company and the Departments is due to the fact that the Departments divided the through fare from the passengers' residences in the District to the Pentagon, by way of the Q–2 line, between the lines operating to and from the Q–2 terminal, in proportion to the respective mileages. This resulted in allotting more than 5 cents per passenger to the Q–2 line, and less than the District fare to the lines transporting the passengers to the Q–2 terminal. Assuming that these operations may be considered independently, it is proper to compute the revenue over both of those lines on the basis of 5 cents per passenger, notwithstanding the restrictions placed around the application of that charge on the Q–2 line.

This ruling, predicated as it is on the assumption that it was proper for the Transit Company's cost exhibit to treat its Pentagon bus line operations independently, is unquestionably right. But, as indicated in the ruling and subsequently confirmed by express finding, the Commission does not consider that the Transit Company's Pentagon bus line service can properly be treated as an

[35] This profit, the witness estimated (R. 643) would yield 23.3 percent on property allocable to the Pentagon bus line operations.

independent service, separate from the service rendered by its District lines in carrying Pentagon passengers between their homes in the District and the Q–2 line terminal.

Following its discussion of Exhibit 103 in connection with the Transit Company's Exhibit 89, the Commission's report reads: (R. 845)

> * * * Analysis of the data of record leads us to the opinion that the cost as computed by the Transit Company is somewhat high, while the Department's figure is too low, and that the actual cost per passenger very closely approximates 5 cents. These cost computations make no allowance for return on investment, but it also should be noted that they cover the entire operations of the Transit Company's Pentagon lines, whereas a part of the transportation performed by those lines is within the District. The cost of operation of these lines is only a portion of the cost of the through operation here considered. Since the traffic originates or terminates on practically every bus or street-car line operated in the District the costs are merged with those of the District operations and may not properly be considered as those of an independent operation.

Here, therefore, although the Commission concludes from its analysis that the actual cost per passenger of that part of the Transit Company's Pentagon operations consisting of the operation of its two Pentagon bus lines approximates 5 cents

(the amount of the fare charged), it, at the same time, points to two considerations. The first is that the cost computations cover the entire operation of the said two bus lines, whereas a part of the transportation performed by those lines is within the District. Here, it is apparent that the Commission has in mind that, although a Pentagon passenger using the Transit Company's Pentagon bus lines must pay 5 cents plus a District fare, the transportation for which such payment is made overlaps transportation which, except in cases of Pentagon passengers, the Company holds out for a District fare between any points in the District. The second consideration to which the Commission points is that, since the Transit Company's Pentagon traffic originates or terminates on practically every line operated by it in the District, the Company's operation of its two Pentagon bus lines cannot, for purposes of cost and revenue computations, be properly regarded and treated as an independent operation. The quotation above given from *Northern Pac. Ry.* v. *North Dakota, supra,* is, it is believed, directly relevant to this latter consideration.

Just as in the case of its Pentagon traffic moving over its two Pentagon bus lines and its lines in the District, similarly in the case of the through passenger traffic between it and the Virginia Lines, the Transit Company made no attempt to show costs and revenue in respect of its lines in the

District on which such traffic originates and terminates; and, as stated, the Virginia Lines introduced no cost studies whatsoever (R. 847). In addition to the cost exhibits introduced by witnesses for the Departments, certain cost testimony in support of their contentions was given by a civilian consultant to the Transportation Corps of the Army (R. 844, 238 et seq.).

Concerning the evidential support for the reasonableness of the fares prescribed by the Commission, there was the cost evidence, above referred to, and, to that evidence, the Commission gave due weight (R. 846). In addition the record showed that the carriers had experienced a large increase in traffic during the war emergency although their costs had also increased (R. 848). Further, there was evidence respecting the "value of the service", that is, that its cost was out of proportion to its value to the employee passengers and more than they should be called upon to bear (R. 850, 13, 17, 366–386). And, in particular, there was the consideration that "the usual and accepted basis for passenger fares in urban communities is a group or zone adjustment under which the same fare is charged for a continuous trip between any two points in a zone regardless of how long or how short it may be (R. 846). Enlarging on this the Commission said (R. 848):

> The making of transportation rates or fares on a group or zone basis is not an uncommon practice. Measured by distance

> alone a certain degree of inequality is naturally inherent in such a system. The same rate or fare is charged for a short distance as well as for the longer ones within the same group or zone, and from a point in one group or zone to a point in another the rate or fare may be higher for a shorter distance than that between points in the same group or zone. The existence of situations of this kind does not in itself indicate any legal impropriety in such an adjustment of rates or fares. The important considerations are whether or not the transportation conditions within a given group or zone are such as to justify the observance of a common level of intragroup or intrazone rates or fares and whether the group or zone boundaries have been reasonably drawn.

The making of rates or fares on a group or zone basis is undoubtedly a very common practice indeed. Zone fare adjustments have their counterparts in freight rate adjustments, such as the so-called group rates to common markets which frequently "blanket" extensive coal, lumber, agricultural or other producing areas and such as the intradistrict switching rates maintained throughout the industrial areas of many large cities. For example, the switching district at Chicago is 40 miles in length and, within it, the same charge is made for switching regardless of the commodity (with a few exceptions) and regardless of distance, the only differentiation made being that the charge for a three-or-more-line

haul is more than that for a two-line haul and the charge for a two-line haul is more than that for a one-line haul. *Illinois Com. Comm.* v. *United States (Chicago Switching Case)*, 292 U. S. 474. In the case just cited the Court said (p. 486):

> Treating an area as a unit and applying a uniform blanket or group rate within it, as is the common practice with respect to switching rates, is within the competence of the Commission. See *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 138, Note 1, 141; *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 518, Note 1; *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 660, 664.

The Commission's order immediately involved in the above case was one entered under section 13 (4) of the Act, increasing the intrastate switching rates involved to the level of the interstate charges. However, as is customary in such case and, in fact, necessary (*Georgia Comm.* v. *United States*, 283 U. S. 765, 770), the Commission had previously determined and fixed the reasonable level of the interstate charges (p. 477) and, accordingly, it follows that the Court's statement, above quoted, as to the competence of the Commission in the intrastate case before it applies equally to the fixing of a uniform group rate for interstate application within a switching district or other blanket area. In the present case, the

Commission did not, of course, determine and fix the zone fares for intra-District use, but it is, nevertheless, evident that its determination that, for interstate fare-making purposes, the urban zone area should reasonably include the Virginia installations just beyond the District line (R. 849) was not a determination foreign to its administrative functions and authority but, on the contrary, involved practically the same transportation considerations as in the *Chicago Switching Case, supra,* or in any interstate group rate adjustment.

The carriers contended that the proper demarcation line for the application of District zone fares was the political boundary between the District and Virginia. There was, on the one hand, evidence showing that in several cities the local fares apply to and from certain points beyond the city limits, and there was, on the other hand, evidence as to a number of cities where the local fares apply within the city and higher fares, on zone bases, apply to nearby communities (R. 844). In the case of the District as the national capital, however, it (the District) had, in effect, "burst its boundaries," requiring the construction of the Pentagon and the other installations (R. 843–844); and the mass movement to and from them daily of residents of the District supplied special reason for treating the installations as within the District zone area. Based on this consideration

and the consideration that, in any event, it should not base its decision on such a "fortuitous circumstance" the Commission concluded that the fact that the installations were just beyond the political boundary line had little or no bearing and that it "should look rather to the essential nature of the transportation and the conditions under which it is performed" (R. 849).

In connection with considerations of such kind, the Commission, referring to evidence introduced by the Departments (Ex. 13, R. 961, 47 et seq.), said (R. 844):

> A computation based upon information obtained from responses of 9,500 employees at the Pentagon and the Army Annex to a questionnaire distributed by the Department shows that the average one-way distance traveled by such employees over respondents' lines between their residences in the District and the installations mentioned is 6.21 miles. This is considerably less than one-half of the maximum distance over which a passenger may travel for one fare within the District, and compares favorably with the distances from a number of selected points within the District to various military establishments in the District where military personnel and civilian employees of the Departments are assigned to duty. * * *

And with respect to the many other considerations showing that the Virginia installations

should reasonably be included in the District zone area, the Commission said (R. 849):

> This is urban, mass transportation between points in the District and points in Virginia just beyond the District-Virginia line, and is the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District. That part of the transportation here under consideration is not comparable with the transportation generally necessary in extension of transit service into suburban areas. In the case of the former, the movement is in vehicles loaded to utmost vehicle capacity and for relatively short distances, while the latter is characterized by longer hauls and less utilization of vehicle capacity although, under present conditions, practically all urban and suburban bus lines are heavily loaded during rush hours. It is to be noted that there are no residential areas between the District and the Virginia installations. These installations represent to all intents and purposes an extension of the main business area of Washington. The operations here considered are under favorable conditions. In addition to capacity loads, the movement for the most part is over a new and elaborate road system especially designed and built to accommodate such traffic. These roadways consist in large part of one way traffic lanes, and they are without impediments com-

monly encountered on city streets, such as grade intersections, traffic lights, left turns, and resultant congestion. Large and expensive improvements and additions have also been made in the traffic arteries on the District side of the Potomac. Respondents have the use of these new and improved facilities in other operations conducted by them.

It will be noted that the above considerations showing that the Virginia installations should, for fare purposes, be included in the District zone area, also lead to a conclusion that zone fares reasonable for application between any points in the District would likewise be reasonable for application between points in the District and the Virginia installations. Because of this, apparently, and the fact that the Commission prescribed, as reasonable for the Transit Company's Pentagon operations, fares not exceeding the present District fares, the Company contended in the lower court that what the Commission's order required of it was, not the establishing of reasonable fares, but the extension of its District fares to include its Pentagon operations. However, it is not at all unusual for the Commission, particularly in group rate adjustments, to prescribe as reasonable from additional origins, rates not to exceed those in established use from other origins. The fact that here the existing District zone fares were determined and prescribed as reasonable by the

District Commission clearly did not discredit their evidential value and it is equally clear that the fact that the Commission, in prescribing the reasonable fares for the Transit Company's Pentagon operations, specified fares not to exceed the District fares, did not make its action other than what it purported to be, namely, the prescribing of reasonable fares. Cf. *Virginian Railway Case, supra,* 272 U. S. 658; *Chicago, R. I. & Pac. Ry.* v. *United States,* 274 U. S. 29.

In the case last cited, the Commission's order prescribed, as reasonable for rail-water-rail transportation of cotton from Oklahoma origins via Galveston to New England destinations, rates not exceeding "rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points." Claiming that the 4-cent differential was the amount charged as premium for insurance to cover the risk of water transportation, the railroads alleged that the order was invalid because the Commission, instead of determining and prescribing reasonable rates, had undertaken to equalize the rail-water-rail rates with the all-rail rates (p. 32). However, the Court did not consider that that view of the action taken by the Commission was warranted, and its opinion also shows (p. 34) that the use made by the Commission of the all-rail rates as comparative evidence was not open to objection.

The Transit Company's objection to the Commission's prescription of fares for its Pentagon

operations at the same level as the District fares was also predicated on the ground that the fares had been fixed by the District Commission (as required by Congress) based solely on its operations within the District and only to yield a fair return on those operations; and, apparently, that for that reason they did not afford a reliable evidential basis for the fares prescribed by the Commission. It is true that, while the record showed that the Transit Company had experienced a large increase in traffic (R. 848–849) since its fares were fixed, neither this showing nor other evidence of record furnished a basis for accurate knowledge of whether the Company's fares were, or were not, just at a proper level. Nor did the Company's cost exhibit or any other of its evidence show just what was the contribution to its revenues made by its Pentagon operations. But, in order that the District zone fares in established use be treated by the Commission as having good probative value in support of the fares it prescribed, it was not necessary that the Commission have accurate knowledge that the former were fixed just at the proper level. *Virginian Railway Case, supra,* 272 U. S. 658, 665.

In the case just cited (which was a group rate case and in other respects presents close analogies to the present case), the Commission's order prescribed the same level of rates on coal from certain mines in a mining district as the group rates which were in effect from other mines and,

in attacking the order, the Virginian urged that the existing group rates were not proper standards of reasonableness; that they were the "outcome of competitive stress and strain through long periods of development" and were "below the level at which maximum reasonable rates might be maintained." Despite these contentions, the Court considered that it was entirely within the Commission's competence to treat the group rates as having good probative value and, in this connection, it said (p. 666) that

> It was shown that a huge coal traffic moves from this territory, under like operating conditions, at the blanket rates which were voluntarily established by the other carriers to serve mines similarly located. This fact, and much else in the voluminous record; afford substantive evidence to support the finding that the existing rates are unreasonable; and that those which the order directs are reasonable.

Here the record, while not showing just what is the amount of traffic moving under the District fares, nevertheless shows that it is in very large volume (R. 849, 840) and, as above detailed (P. 113) there was other evidence and other grounds supporting the Commission's order.

It will have been noted that, while the fares prescribed as maxima for the "one-line hauls" over the Transit Company's own routes were at the same level as the District fares, the joint fares

prescribed by the Commission as maxima for application over the through routes between the Transit Company and the Virginia Lines were at a higher level. However, the carriers clearly cannot advance this fact as a grievance. The revenue from the fares has to be divided and, as illustrated in the *Chicago Switching Case, supra,* it is common practice in like, or analogous, situations to make a greater charge for "two-or-more-line-hauls" than for "one-line-hauls." Cf. *Georgia Comm.* v. *United States,* 283 U. S. 765, 767.

As regards the local fares of the Virginia Lines between the Virginia installations and their District terminals, the Commission, as above shown, found in its report (R. 851) as follows: That the fares

> are unreasonable to the extent that they exceed a fare of three tokens for 25 cents, equal to 8⅓ cents per one way trip, provided, however, that the present cash fare of 10 cents per single trip may be continued. The local fare of 7.5 cents of the Alexandria, Barcroft & Washington Transit Company between the Army Air Force Annex and the District terminal of that Company may be increased to the basis herein approved.

The only findings requiring reduction in the said local fares of the Virginia Lines are, it will be noted, those requiring "a fare of three tokens

for 25 cents." The Commission had found (R. 850) that:

> So far as the Alexandria and Arlington Lines are concerned, it is shown that they have reaped a particularly important advantage from this traffic, which makes for economical and profitable operation. Formerly their traffic was unbalanced, but they now have an important volume of counter-flow traffic, an advantage which is rather unique in the business of urban or suburban transportation.

And, further, all of the Commission's findings (R. 849) respecting the favorable operating conditions under which the transportation is conducted, the new and modern roadway system, the full capacity loads and the like apply very forcibly to the said local transportation and fares of the Virginia Lines as do also the Commission findings (R. 850) that the existing fares are out of proportion to "the value of the service" to the passenger employees and more than they should be called upon to bear. In addition, the Commission's findings that the District urban area should reasonably include the Virginia installations apply and, in and of themselves, afford sound reason and warrant for the prescription of the token fare.

VI. Appellees' objections to Exhibit 13 are unwarranted

The appellees contended in the lower court that the computation (Ex. 13, R. 844) showing the average distance travelled by passenger employees between their homes in the District and the Pentagon and Army Annex was improperly in evidence. This contention is wholly without warrant. Both of the officers who compiled the returns qualified as expert statisticians. The questionnaires were signed by each employee, with his room number, and were made available at the hearing to counsel for the appellees for cross-examination (R. 584 et seq., 616 et seq.). They were actually used for that purpose. The direct, as well as the cross-examination, show that these exhibits were prepared under the immediate supervision of the Army officers named (R. 42, 47, 584, 616). Moreover, counsel for the War Department offered to make available for examination by the appellees all persons who assisted in the preparation of the exhibits and all signers of the questionnaire. The offer was not accepted by counsel for appellees. (R. 595.)

If there was any question concerning the validity of Exhibit 13 and other exhibits which rested upon returns to the questionnaire, the appellees are estopped from raising any objection now because they sought to take advantage of information contained in the questionnaires in respect of certain matters. For example, they have argued

that the fares in issue are not unreasonable because, allegedly, only a small proportion of the employees made any complaint about the fares in their returns to the questionnaire and a number commended the service rendered by the carriers (R. 614–615). Moreover, as above indicated, appellees' counsel made use of the questionnaires in their cross-examination, and they did not take advantage of the offer made by counsel for the War Department to produce the compilers of the exhibits and the signers of the questionnaires.

Exhibit 13 and other exhibits predicated upon returns to the questionnaire were properly admissible under Rule 75 of the Commission's General Rules of Practice. This rule is as follows:

> Any evidence which would be admissible under the general statutes of the United States or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the United States, shall be admissible in hearings before the Commission. The rules of evidence shall be applied in any proceeding to the end that needful and proper evidence shall be conveniently, inexpensively, and speedily produced, while preserving the substantial rights of the parties.

The admission of Exhibit 13 and other exhibits mentioned, based upon the returns to the questionnaire, was not at variance with the hearsay rule.

The general rule in such circumstances is stated in 22 Corpus Juris, p. 218, as follows:

> The hearsay rule does not necessarily preclude a witness from stating what certain unsworn statements show and, assuming them to be correct, what they prove; nor is such rule violated by allowing a witness to state the results of voluminous facts, or of an inspection of books and papers which cannot conveniently take place in court.

The evidence was also admissible under the opinion evidence rule that an expert may testify to the results of complex or collective facts, 22 Corpus Juris p. 531. Obviously, evidence of the character under consideration could have been presented in no other way.

CONCLUSION

It is respectfully submitted that the decree of the court below should be reversed with directions to dismiss the bill for want of equity.

DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

APPENDIX "A"

Pertinent provisions of Interstate Commerce Act, Part II.

Section 203 (b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations,

if such federation possesses no greater powers or purposes than cooperative associations so defined; or (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation; or (7) motor vehicles used exclusively in the distribution of newspapers; or (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such inter-

state route or routes in accordance with the laws of each State having jurisdiction; or (9) the casual, occasional, or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, unless, in the case of transportation of passengers, such transportation is sold or offered for sale, or provided or procured or furnished or arranged for, by a broker, or by any other person who sells or offers for sale transportation furnished by a person lawfully engaged in the transportation of passengers by motor vehicle under a certificate or permit issued under this part or under a pending application for such a certificate or permit.

Section 205 (a) The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, permits, or licenses; the suspension, change, or revocation of such certificates, permits, or licenses; applications for the approval and authorization of consolidations, mergers, and acquisitions of control or operating contracts; complaints as to violations by motor carriers or brokers of

the requirements established under section 204 (a); and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: *Provided, however,* That if the Commission is prevented by legal proceedings from referring a matter to a joint board, it may determine such matter as provided in section 17. The Commission, in its discretion, may also refer to a joint board any investigation and suspension proceeding or other matter not specifically mentioned above which may arise under this part. The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are proposed to be conducted: *Provided,* That the Commission may designate an examiner or examiners to advise with and assist the joint board under such rules and regulations as it may prescribe. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers, and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon: *Provided, however,* That a joint board may, in its discretion, report to the Commission its conclusions upon the evidence received, if any, without a recommended order. Orders recommended by joint boards shall be filed with the Commission, and shall become orders of the Commission and become effective in the same manner, and shall be subject to the same procedure, as provided in the case of orders recommended by members or examiners under section 17. If a joint board

to which any matter has been referred shall report its conclusions upon the evidence without a recommended order, such matter shall thereupon be decided by the Commission, giving such weight to such conclusions as in its judgment the evidence may justify.

Section 216 (a) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case

of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(d) All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate of foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. * * *

(e) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 217: Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge

or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon it own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however,* That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

APPENDIX "B"

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 30th day of December, A. D. 1944

MC 75289 Sub 7 TA	Capital Transit Company, Washington, D. C.
" Sub 8 TA	
MC 84728 Sub 11 TA	Safeway Trails, Inc., Washington, D. C.
MC 101349 Sub 4 TA	Richard M. O'Boyle and Lillian M. O'Boyle,
" Sub 8 TA	dba M. I. O'Boyle & Son, Washington, D. C.
" Sub 9 TA	
" Sub 14 TA	
MC 102515 Sub 2 TA	James E. Hood, Washington, D. C.
MC 104208 TA	Chester Moore Atwood, dba Atwood's Camp Pickett Transport Service, Washington, D. C.
MC 104326 TA	Safeway Trails, Inc., Washington, D. C.
MC 104623 Sub 2 TA	Morris Fox, Washington, D. C.
" Sub 5 TA	
MC 104809 TA	Sam Milkie, Washington, D. C.
MC 104897 TA	Percival H. Beavers, Washington, D. C.
MC 47221 Sub 1 TA	Catherine G. Hitchcock, Dover, Del.
MC 79544 Sub 1 TA	McCormick Transportation Company, Wilmington, Del.
MC 87109 Sub 1 TA	Masten Trucking Company, Inc., Milford,
" Sub 3 TA	Del.
MC 93549 Sub 2 TA	William M. Mayew, Inc., Newport, Del.
MC 94286 Sub 4 TA	Earl Perry, Delaware City, Del.
MC 102434 Sub 5 TA	U. S. Aeroplane Carriers, Inc., Dover, Del.
" Sub 6 TA	
" Sub 13 TA	
" Sub 17 TA	
" Sub 21 TA	
" Sub 22 TA	
" Sub 29 TA	
" Sub 31 TA	
" Sub 32 TA	
" Sub 33 TA	
" Sub 39 TA	
" Sub 40 TA	
" Sub 41 TA	
" Sub 42 TA	
MC 104348 Sub 1 TA	S. G. Fullman, Delaware City, Del.

These proceedings coming on for further consideration:

IT APPEARING, That in accordance with the provisions of the Interstate Commerce Act, as amended; temporary authority has heretofore been granted to the above applicants, respectively, to operate as motor carriers in interstate or foreign commerce, until December 31, 1944.

IT FURTHER APPEARING, That by Act of Congress, approved December 21, 1944, the amendments of the Interstate Commerce Act, included in the Second War Powers Act, have been continued in force until December 31, 1945, and,

IT FURTHER APPEARING, After due investigation that the public interest requires a continuation of the operations conducted under the orders above-named and the urgent need for such service still exists; therefore,

IT IS ORDERED, That each of the above-named carriers, be, and they are hereby authorized to continue the operations specified in said orders, respectively, until December 31, 1945, unless otherwise ordered.

By the Commission, division 5.

(SEAL.) W. P. BARTEL, *Secretary*.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 30th day of December, A. D. 1944

MC 75289 Sub 7 TA	Capital Transit Company, Washington, D. C.
" Sub 8 TA	
MC 84728 Sub 11 TA	Safeway Trails, Inc., Washington, D. C.
MC 101349 Sub 4 TA	Richard M. O'Boyle and Lillian M. O'Boyle,
" Sub 8 TA	dba M. I. O'Boyle & Son; Washington, D. C.
" Sub 9 TA	
" Sub 14 TA	

MC 102515 Sub 2 TA	James E. Hood, Washington, D. C.
MC 104208 TA	Chester Moore Atwood, dba Atwood's Camp Pickett Transport Service, Washington, D. C.
MC 104326 TA	Safeway Trails, Inc., Washington, D. C.
MC 104623 Sub 2 TA	Morris Fox, Washington, D. C.
" Sub 5 TA	
MC 104809 TA	Sam Milkie, Washington, D. C.
MC 104897 TA	Percival H. Beavers, Washington, D. C.
MC 47221 Sub 1 TA	Catherine G. Hitchcock, Dover, Del.
MC 79544 Sub 1 TA	McCormick Transportation Company, Wilmington, Del.
MC 87109 Sub 1 TA	Masten Trucking Company, Inc., Milford, Del.
" Sub 3 TA	
MC 93549 Sub 2 TA	William M. Mayew, Inc., Newport, Del.
MC 94286 Sub 4 TA	Earl Perry, Delaware City, Del.
MC 102434 Sub 5 TA	U. S. Aeroplane Carriers, Inc., Dover, Del.
" Sub 6 TA	
" Sub 13 TA	
" Sub 17 TA	
" Sub 21 TA	
" Sub 22 TA	
" Sub 29 TA	
" Sub 31 TA	
" Sub 32 TA	
" Sub 33 TA	
" Sub 39 TA	
" Sub 40 TA	
" Sub 41 TA	
" Sub 42 TA	
MC 104348 Sub 1 TA	S. G. Fullman, Delaware City, Del.

These proceedings coming on for further consideration:

IT APPEARING, That in accordance with the provisions of the Interstate Commerce Act, as amended, temporary authority has heretofore been granted to the above applicants respectively, to operate as motor carriers in interstate or foreign commerce, until December 31, 1944.

IT FURTHER APPEARING, That by Act of Congress, approved December 21, 1944, the amendments of the Interstate Commerce Act, included in the Second War Powers Act, have been continued in force until December 31, 1945, and,

IT FURTHER APPEARING, After due investigation that the public interest requires a continuation of the operations conducted under the orders above-named and the urgent need for such service still exists; therefore,

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By the Commission, division 5.

(SEAL.) W. P. BARTEL, *Secretary.*

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 30th day of December, A. D. 1944

MC 2610 Sub 1 TA	William C. Barry, Inc., Medford, Mass.
MC 3049 Sub 1 TA	Edmund O. Rainville, dba E. O. Rainville Auto Transport, Springfield, Mass.
MC 38516 Sub 2 TA	Jacob M. Blassberg, Shelburne Falls, Mass.
MC 69747 Sub 2 TA	Arthur K. Finney, dba A. K. Finney, Plymouth, Mass.
MC 105077 Sub 1 TA	Beraice Guilbeau, dba Leo C. Guilbeau, South Hadley Falls, Mass.
MC 82211 Sub 2 TA	Vincenzo Frank Orza, New York, N. Y.
MC 103869 Sub 4 TA	Owners Trucking Company, Inc., Syracuse, N. Y.
MC 104123 Sub 27 TA	John Schutt, Jr., Inc., Buffalo, N. Y.
MC 32413 Sub 1 TA	A. N. Yearick and W. L. Yearick, dba Yearick's Dray, Lewistown, Pa.
MC 41640 Sub TA	Christian C. Dietrich and Ernest J. Dietrich,
" Sub 8 TA	dba Dietrich Brothers, Philadelphia, Pa.
MC 45079 Sub 2 TA	George S. Morelock, Harrisburg, Pa.
MC 30313 Sub 3 TA	George J. Bertch, Kane, Pa.
MC 65916 Sub 3 TA	Ward Trucking Corp., Altoona, Pa.
MC 103764 Sub 1 TA	Ray E. Benson and Warren W. Benson, dba Benson Brothers, Huntingdon, Pa.
MC 43461 Sub 3 TA	Eli I. Soldier and James J. Soldier, dba Soldier Brothers Auto Body Transit Lines, Toledo, Ohio

MC 86931 Sub 8 TA	Ward E. Lanning, Coshocton, Ohio.
" Sub 9 TA	
MC 60508 Sub 2 TA	Robert White Wilson, Yanceyville, N. C.
MC 62826 Sub 1 TA	Carolina-Norfolk Truck Line, Norfolk, Va.
" Sub 3 TA	
MC 68167 Sub 10 TA	Washington, Virginia and Maryland Coach Company, Inc., Arlington, Va.
MC 102538 Sub 5 TA	W. E. Penley, dba Yellow Cab and Coach Company, Bristol, Va.
MC 104682 TA	Lonnie Albert Hensley, dba Lonnie A. Hensley, Elkton, Va.

This authority was previously granted under MC 103507 TA.

These proceedings coming on for further consideration:

IT APPEARING, That in accordance with the provisions of the Interstate Commerce Act, as amended, temporary authority has heretofore been granted to the above applicants respectively, to operate as motor carriers in interstate or foreign commerce, until December 31, 1944.

IT FURTHER APPEARING, That by Act of Congress, approved December 21, 1944, the amendments of the Interstate Commerce Act, included in the Second War Powers Act, have been continued in force until December 31, 1945, and,

IT FURTHER APPEARING, After due investigation that the public interest requires a continuation of the operations conducted under the orders above-named and the urgent need for such service still exists; therefore,

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By the Commission, division 5.

(SEAL.) W. P. BARTEL, *Secretary*.

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